

Henry P. Raybal
Commissioner, District 1
Miguel M. Chavez
Commissioner, District 2
Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4
Liz Stefanius
Commissioner, District 5
Katherine Miller
County Manager

DATE: September 29, 2015

TO: Board of County Commissioners

FROM: Jose E. Larranaga, Development Review Team Leader

JEL

VIA: Katherine Miller, County Manager

Penny Ellis-Green, Growth Management Director

Vicki Lucero, Building and Development Services Manager

Wayne Dalton, Building and Development Services Supervisor

FILE REF.: BCC CASE # APP 15-5250 Robert and Bernadette Anaya Appeal

ISSUE:

Robert and Bernadette Anaya, Applicants, Karl H. Sommer (Sommer, Karnes & Associates, LLP), Agent, are appealing the County Development Review Committee's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as it was deemed untimely. The property is located at 2253 Ben Lane, within Section 31, Township 17 North, Range 9 East, (Commission District 2).

VICINITY MAP:



SUMMARY:

On May 21, 2015, the County Development Review Committee (CDRC) met and acted on a request made by Robert and Bernadette Anaya (Applicants) to appeal the Land Use Administrator's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan because it was untimely and incomplete. The CDRC upheld the Land Use Administrator's decision to reject the Applicant's submittal for Master Plan, Preliminary and Final Development Plan approval because it was untimely and incomplete. The motion to deny the appeal passed by a unanimous 6-0 vote. (Exhibits 15 & 16)

The following is a chronology of the past events leading up to the Applicants' request:

On November 13, 2012, the Board of County Commissioners (BCC) granted a request made by the Applicants for a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the Board of County Commissioners. The approval of the variance was conditioned on the Applicants presenting a Master Plan to the BCC, within eight (8) months of the November 13, 2012, hearing (Exhibit 1). The Applicants submitted an Application for Master Plan, Preliminary and Final Development Plan on February 8, 2013, more than eight months after the deadline established by the BCC.

On April 18, 2013, the CDRC met and acted on the request by the Applicants for Master Plan Zoning and Preliminary Development Plan approval. Staff only recommended Master Plan approval because the request for Preliminary Development Plan approval was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j, Development Plan Requirements, and Article III, § 4.4, Development and Design Standards. The decision of the CDRC was to recommend **approval of the Applicants' request for Master Plan approval** and denial of the Applicants' request for Preliminary Development Plan. (Exhibit 2)

On June 11, 2013, the BCC granted the request for Master Plan Zoning to allow a towing business on 0.33 acres ± (Exhibit 3), subject to the following conditions:

1. The Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;
2. A Preliminary and Final Development Plan shall be submitted within ninety days of issuance of this Order, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
3. The Applicants shall comply with Ordinance No. 2007-2, § 10.6, Density & Dimensional Standards;
4. Storage of towed vehicles shall not be permitted on this site as per the 1989, decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
5. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;

On September 26, 2013, the Applicants submitted a request for an extension of time to submit the Preliminary and Final Development Plan, an amendment to the approved Master Plan, and for reconsideration of the BCC's August 20, 2013, Final Order conditions. The Applicants submitted a letter of request (Exhibit 4), a copy of the Master Plan Report, Master Plan drawings, fees, deed and recorded plat;

On March 11, 2014, the BCC held a public hearing on the request by the Applicants to reconsider the conditions imposed on the Master Plan Zoning approved on June 11, 2013. The BCC then deliberated over the matter in closed executive session on March 25, 2014, and again on May 13, 2014. The conditions that the Applicants requested the BCC to reconsider are:

1. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order.
2. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.
3. The implementation of a landscape buffer on the east side of the site alongside the platted easement.
4. The listing of personal vehicles that will be stored on the site.

On June 11, 2014, the BCC approved a Final Order which denied the request to reconsider the conditions and which allowed an extension of the deadline for submitting a Preliminary and Final Development Plan to the CDRC, to thirty days after recording the order denying the request for reconsideration. All other requests were denied. (Exhibit 5)

The approval of the extension of the previously imposed deadline was subject to submitting the Preliminary and Final Development Plan to the County Development Review Committee within thirty days of the recordation of the Final Order. The Final Order was recorded on June 13, 2014. The Preliminary and Final Development Plan was not submitted within the thirty (30) days of the recording date. Additionally, an appeal of the Order was not filed within thirty (30) days of the recording date.

A copy of the recorded Final Order was mailed to the Applicants on June 16, 2014, via certified mail along with a letter stating the following:

This letter is to inform you that the Board of County Commissioners (BCC) met and acted on your request for reconsideration of conditions which were imposed by the BCC for Master Plan Zoning approval to allow a towing business on .33 acres. The decision of the BCC was to deny your Application, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended thirty (30) days after recording of the Final Order. The Final Order was recorded on June 13, 2014. The enclosed order is a final order of the Board of County Commissioners, which, pursuant to Section 39-3-1.1 of the New Mexico Statutes Annotated 1978, you may appeal by filing a timely Notice of Appeal in the appropriate district court. Any such district court

appeal must be filed within 30 days of the recording of this Order. The Order was recorded today, which is a matter of public record. (Exhibit 6)

On June 17, 2014, the United States Postal Service left notice of the certified letter at the Applicants' mailing address. The Applicants did not contact staff nor did they file an appeal with the District Court during the 30 day period. The Applicants did contact staff after the thirty day deadline and inquired how to proceed with their Application. Staff advised the Applicants that the deadline for submitting the Preliminary and Final Development Plan and for filing an appeal to District Court had expired.

On August 13, 2014, approximately twenty-nine days after the deadline for their submission, or approximately fifty-nine days after the Final Order was recorded, Joseph Karnes on behalf of the Applicants submitted an Application for Master Plan Zoning, Preliminary and Final Development Plan. The plan that was submitted was identical to the original submittal, submitted on February 7, 2013, which ultimately did not meet Code requirements or conditions imposed by the Board of County Commissioners. The submittal was deficient in the following:

- a. The proposed Master Plan, Preliminary and Final Development Plan drawings do not demonstrate the easement required to create the 28 foot inside radius, at the intersection of Agua Fria and Ben Lane, which is required by the County Fire Marshal.
- b. The proposed plan set illustrates 8 parking spaces for trucks, where the condition of approval, by the BCC, was to limit the Tow Trucks to 5 (three small tow trucks and two large tow trucks).
- c. A Master Plan Report and Development Plan Report was not submitted as per Article V, Section 5.2.2 Master Plan Submittals and Article V, Section 7.2.1 Final Development Plan Submittals.
- d. A survey to create a .33 acre parcel to be zoned as a Special Use, under the Village of Agua Fria Zoning District Ordinance Use Table, was not submitted;

On November 13, 2014, the Land Use Administrator issued a letter to Mr. Karnes stating the following: "[t]he submission of the Robert & Bernadette Anaya Master Plan, Preliminary and Final Development Plan is rejected as untimely and not constituting a complete Application." (Exhibit 9)

The Applicants claim that they did not receive notice of the Final Order adopted by the BCC until after the 30 days had passed. They also claim that the Final Order did not address ramifications of failure to submit the Application within the identified timeframe.

Staff Response: The Applicants failed to appeal, in a timely manner, the BCC order imposing a deadline for submission of the Preliminary and Final Development Plan as a condition precedent to Master Plan approval. The BCC approval of the order was made in a televised open meeting and the order was adopted at properly noticed public hearing. A certified letter along with the Final Order was mailed to the Applicants, a letter the Applicants did not timely retrieve. The failure of the Applicants to retrieve the order sent to them does not serve to extend the deadline for submission of the Preliminary and Final Development Plan, which deadline was triggered by the recording of the Order in the Office of the County Clerk. In light of the untimely filing of the

Master Plan, Preliminary and Final Development Plan, no Master Plan Zoning is in place which would form the basis for the submission of a Preliminary and Final Development Plan. Having failed to meet a condition precedent to approval of the Master Plan, staff has no authority to accept the Master Plan, Preliminary and Final Development Plan for processing. Additionally, the documents presented were not compliant with submittal requirements of the Code.

Article II, § 2.3.4 Appeals, the Santa Fe County Land Development Code, Ordinance No. 1996-10

2.3.4a Filing an Appeal

All appeals under the Code shall be filed in writing with the Code Administrator.

2.3.4.c Appeal of Development Review Committee Decisions to the Board

- i. Any person aggrieved by a decision of a Development Review Committee may file an appeal in writing to the Code Administrator within thirty (30) calendar days of the date of the decision of the Development Review Committee. The Board shall hear the appeal within sixty (60) calendar days after the date the appeal is filed. The Board shall timely make and file its decision approving or disapproving the application or approving the application with conditions or modifications.
- ii. The decision of the Board shall become final on the date when the decision is filed.

The owner of the Property acquired the Property by Quitclaim deed recorded as Instrument # 1543429 in the Santa Fe County Clerk's records dated November 6, 2008. Sommer, Karnes & Associates, LLP is authorized by the property owner to pursue the request for an appeal of the CDRC's decision as evidenced by a copy of the written authorization contained in the record. (Exhibit 3)

Notice requirements were met as per Article II § 2.4.2, of the Land Development Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty-one days on the property, beginning on September 22, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on September 22, 2015, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners (Exhibit 14).

This Application was submitted on August 14, 2015.

STAFF RECOMMENDATION:

Staff recommends denial of the Applicants' appeal of the CDRC's decision to uphold the Land Use Administrator's decision to reject the Applicant's Master Plan, Preliminary and Final Development Plan submittal because it was untimely submitted and did not constitute a complete Application.

Staff requests BCC to support the CDRC and Land Use Administrator's decisions to deny the Applicant's Master Plan, Preliminary and Final Development Plan submittal because it was untimely and not in compliance with the BCC's June 13, 2014 Final Order and (30) thirty day deadline extension.

EXHIBITS:

1. November 13, 2012, Variance Final Order & BCC minutes
2. April 18, 2013, CDRC minutes
3. June 11, 2013, Master Plan Final Order & BCC minutes
4. September 26, 2013, Applicants request for time extension
5. June 10, 2014, BCC Final Order
6. June 13, 2014, letter sent to Applicants
7. USPS Tracking of Certified letter sent to Applicants on June 13, 2014
8. August 13, 2014, Applicants letter requesting Master Plan, Pre. & Final Development Plan
9. November 13, 2014, Land Use Administrator letter deeming the Application untimely
10. November 17, 2014, Applicants letter requesting an Appeal of the LUA decision
11. Article II, Section 2.3.4 Appeals
12. Aerial Photo of Site
13. Deed, Plat and Letter of Authorization
14. Santa Fe County Fire Department Incident Report
15. CDRC May 21, 2015 Minutes
16. CDRC Final Order
17. August 14, 2015, Applicants letter requesting an Appeal of the CDRC decision
18. Proof of Legal Notice

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. CDRC V 12-5200
VARIANCE OF ORDINANCE NO. 2007-2, VILLAGE OF AGUA FRIA ZONING
DISTRICT, SECTION 10.5 VILLAGE OF AGUA FRIA ZONING DISTRICT USE
TABLE
ROBERT AND BERNADETTE ANAYA, APPLICANTS

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on August 14, 2012 and November 13, 2012, on the Application of Robert and Bernadette Anaya (hereinafter referred to as "the Applicants") for a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicants request a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the Board of County Commissioners. The use as a towing company falls under the category of "Vehicle service not listed" which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

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2. The project is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2).

3. Following a hearing on the Applicants' request for a variance, the County Development Review Committee, at its June 21, 2012 meeting, recommended denial of the variance request.

4. Article II, Section 3 (Variances) states where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance. This Section goes on to state that in no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

5. Article II, Section 3.2 (Variation or Modification) states in no case shall any variation or modification be more than a minimum easing of the requirements.

6. On August 14, 2012, the Applicants stated that the towing business had been in operation since 1989 at the current location and the property had been in the family for generations. The business started with 2-3 tow trucks on the family property and expanded to 8 tow trucks varying in size. The trucks were being parked across from their residence. As the property was developed, by family members, the trucks were moved to different locations on the family property.

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Eventually the trucks were moved to the back portion of the lot currently owned by the Anayas. The ability to operate the business with eight towing vehicles on the site provides a community service by improving response time to emergencies.

7. On August 14, 2012, Merit Bennett and Talia Kosh, on behalf of the Applicants, submitted material and testified in support of the variance.

8. On August 14, 2012, on behalf of the Applicants eight (8) members of the public spoke in favor of the variance.

9. On August 14, 2012, four (4) members of the Public spoke in opposition to the variance.

10. After conducting a public hearing on August 14, 2012 on the request and having heard from the Applicants and members of the public, the Board of County Commissioners tabled the request for the variance so that this issue could go through mediation.

11. Santa Fe County retained Rosemary Romero as a mediator.

12. On November 13, 2012, the BCC reviewed the Application and supplemental materials as well as staff reports including a summary of the mediator's findings.

13. On November 13, 2012, Rosemary Romero, the mediator hired to facilitate the mediation between the Anayas' and the neighbors, testified that due to reluctance, refusal and/or timing, mediation between the parties involved was not possible.

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14. On November 13, 2012, the Applicants answered questions posed by the BCC.

15. The granting of the requested variance is a minimal easing of the Code.

16. Granting this variance request will not nullify the purpose of the Code.

17. After conducting a public hearing on the request and having heard from the Applicants, the Board of County Commissioners hereby finds that a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres by recognizing the towing business as a Special Use under the Village of Agua Fria Zoning District Use Table, should be approved conditioned on the Applicants presenting a Master Plan to the BCC, within eight (8) months of the November 13, 2012 hearing (July 9, 2013).

IT IS THEREFORE ORDERED that the Application is approved, and the Applicants are allowed a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres as a Special Use subject to Master Plan Zoning and Development Plan approval, by which approval must be sought, by the Board of County Commissioners, no later than July 9, 2013.

I certify that the Application was approved by the Board of County Commissioners on this

12th day of February, 2013.

The Board of County Commissioners of Santa Fe County

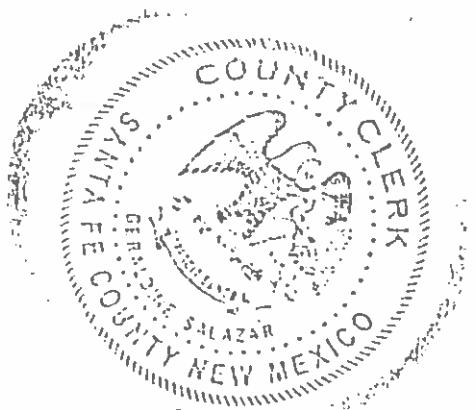
By: *Geraldine Salazar*
BCC Chairperson

ATTEST:

Geraldine Salazar 2/12/13
Geraldine Salazar, County Clerk

Approved as to form:

Stephen C. Ross
Stephen C. Ross, County Attorney



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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss PAGES: 54

I Herby Certify That This Instrument Was Filed for
Record On The 12TH Day Of February, 2013 at 03:13:17 PM
And Was Duly Recorded as Instrument # 1696461
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar Geraldine Salazar
Deputy County Clerk, Santa Fe, NM

CHAIR STEFANICS: Thank you. Let's go to public comment. This is a public hearing. Is there anyone here to support or oppose this project? Okay, the public hearing is now closed. There was a motion to approve and a second. Discussion, questions from the rest of the Commission?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: I just wanted to apologize for jumping in there. I read the packet and saw the discussion in CDRC and saw the condition contained therein and those approvals, but I definitely don't want to jump the gun on the public, so thanks for realigning us.

CHAIR STEFANICS: No further discussion?

The motion passed by unanimous [5-0] voice vote.

- XV. A. 5. CDRC Case # V 12-5200 Robert & Bernadette Anaya Variance. Robert & Bernadette Anaya, Applicants, Talia Kosh (the Bennett Firm), Agent, Request a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village of Agua Fria Zoning District Use Table), to Allow a Towing Business on 0.70 Acres. The Property is Located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East (Commission District 2) [Exhibits 2 & 3: Letters of Opposition]

MR. LARRAÑAGA: Thank you, Madam Chair. Robert & Bernadette Anaya, applicants, Talia Kosh, agent, request a variance of Ordinance No. 2007-2, Section 10.5 to allow a towing business on 0.70 Acres. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, Commission District 2.

On June 21, 2012, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend denial of the applicants' request for a variance.

The applicants request a variance to allow a towing business as a special use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table. A special use is an allowed use which is subject to master plan and development plan approval by the Board of County Commissioners. The use as a towing company falls under the category of vehicle service not listed which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

The applicants state, The towing business has been in operation since 1989 at the current location and the property has been in the family for generations. The ability to operate the business with eight towing vehicles on the site provides a community service in response time to emergencies.

The applicant's were issued a notice of violation of Ordinance No. 1992-3 on February 9, 2012, for operating a business without a county business registration. It was

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determined by staff that this type of business activity was not allowed within the Agua Fria Traditional Community under Ordinance No. 2007-2.

On July 12, 1989, the applicant made application to allow a small-scale commercial vehicle impound yard on this site as a special exemption of the Extraterritorial Zoning Ordinance. On August 28, 1989 the Extraterritorial Zoning Authority denied the Applicants' request and ordered the Applicants to discontinue all commercial activity on the site.

Article II, Section 3 of the County Code states: Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance. This section goes on to state, In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

Article II, Section 3.2 states: In no case shall any variation or modification be more than a minimum easing of the requirements.

Growth Management staff thoroughly reviewed the application for compliance with pertinent Code requirements and found the application is not in compliance with County criteria for this type of development. Staff has conceptually reviewed the site for zoning requirements as a special use and has determined that further variances may be required for this site to meet master plan/development plan criteria.

Staff recommendation is denial of a variance from Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5 Village of Agua Fria Zoning District Use Table, to allow a towing business as a special use under the Zoning Use Table. Madam Chair, I stand for any questions.

CHAIR STEFANICS: Are there questions for staff? Commissioner Vigil.

COMMISSIONER VIGIL: Does this comply with the Agua Fria plan? Have you had an opportunity to do that evaluation?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no, not to the plan. It doesn't comply with the ordinance.

COMMISSIONER VIGIL: Thank you.

CHAIR STEFANICS: Any other questions for staff before we go to the applicant?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Larrañaga, could you talk again – and I'm reading back through some of what you just went through- but relative to the length of time that the company's been in business, and restate when the violation was issued. Has it been in place since 1989? Is that correct? Has the business been in place in that location since 1989?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that's what the applicant states. The notice of violation was issued February 9, 2012. That's when we had a complaint and an officer went out there and saw that they were running a business without a business license.

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COMMISSIONER ANAYA: Has the County – and I thought you mentioned we had issued some other violations? Have we issued other violations preceding February 12th of this year?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, not to my knowledge. In 1989, that's when the applicant made application to the EZO for a special exemption to have a towing – to have a storage yard and parking yard there and they were denied. One of the letters, exhibit 8, where they were supposed to take the cars out of there as an impound yard.

COMMISSIONER ANAYA: So we provided a notice for them to take the cars out in 1989 for an impound yard? The County did?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that's correct. It was after a denial from the Extraterritorial Zoning Authority.

COMMISSIONER ANAYA: So then we only followed up on that and 23 years later in February of this year we got another complaint and we followed up with a code enforcement violation. Is that what it was?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, of course I wasn't here in 1989 but they followed up and made them take out all the cars. Some of the aerials, they covered a lot more than what their property is. .70 acres as an impound yard, and then we recently got a complaint back in February, January/February of having the tow trucks. They don't have any more, that I know of – they're not using it as an impound yard as you can see from the newest aerial. It's all filled up with residential houses and different lots on that area.

COMMISSIONER ANAYA: So, Madam Chair, Mr. Larrañaga, did the County ever, prior to February of this year, issue any violations for a tow truck business?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, not to my knowledge.

COMMISSIONER ANAYA: Thank you.

CHAIR STEFANICS: Anything else for staff before we go to the applicant?

Okay, is the applicant here? Please come forward and be sworn in. Okay, anyone who is going to speak for the applicant needs to be sworn in, so yourself or others.

MERIT BENNETT: I'm counsel for the applicant.

CHAIR STEFANICS: So is anyone else going to speak for the applicant except yourself?

MR. BENNETT: I think counsel will and also Mr. Anaya will speak.

CHAIR STEFANICS: Okay. So anyone who's not counsel – are rules are different for counsel, correct, Steve? They're bound to the word. Okay, so anybody on this group who's not an attorney would you please stand and be sworn in.
Dddgroup.

CHAIR STEFANICS: Okay, so when you speak, we're going to need you to say your name, your full name and your address so it goes into the record. And why don't you start off with your introduction. I missed your name. I'm sorry.

MR. BENNETT: Merit Bennett.

CHAIR STEFANICS: Oh, Merit Bennett. Okay.

MR. BENNETT: Good evening. Thank you for taking this time to hear the

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case of the applicant. First, in response to Mr. Larrañaga's comments with respect to the decision in 1989 regarding not having an impound lot on this property. That decision was obeyed. This is not about an impound lot. The Anayas were conducting a towing business. They were since 1989 to this date at this location. At that time they did make application to store some of the vehicles that they had towed when they would go to the scene called by the State Police, County Sheriff's Office or City Police, they would oftentimes - drunk drivers, they would have to tow an impounded vehicle and impound it. And yes, they were making application to be able to impound those vehicles on this particular property and their application was denied.

In response to that denial the Anayas then established another offsite impound lot where they have been since 1989 towing the vehicles that are impounded to that lot and they're stored and warehoused at that lot. The impound lot question has nothing to do with this application, just to be clear, because that, as we already know, that petition was denied for those reasons. It presents a whole different issue within a community area than conducting a family business. So this is not that, just to make clear.

The Anayas have owned this property. They're fifth generation family, have owned this particular property on Ben Lane for probably as long as we've been here and they have been landowners. Their family compound has been in the Agua Fria Village for that period of time. In 1989 Mr. Anaya purchased an existing towing company, Padilla's Roadrunner Wrecker Service. This is Anaya's Roadrunner Wrecker Service, purchased an existing towing company that had been grandfathered in in 1981 by the Agua Fria Village Ordinance. So there already was an existing towing company that I believe, according to Mr. Anaya had the same number of vehicles as the Anayas currently park at their location.

This towing company consists of eight vehicles of varying sizes and capabilities and in order to perform a varying degree of tasks for state, local, federal, our City and our County. These services include anything from towing a vehicle from the scene of a crash or a drunk driver is stopped, to recovering vehicles that have gone down ravines or into riverbeds or off the road during ice storms or whatever, and some of these vehicles have very large weight capacities and degrees of difficulties in extracting them from various hazardous positions. And the Anayas are really the only towing company in northern New Mexico that can accommodate all of these needs of state and local authorities.

So they're called constantly, and this is a constant, 24/7 business. They have a contract with the County to provide 24/7, 365 days a year service and that contract I will discuss later. It's in the exhibit book that you've been provided.

As a part of this obligation to keep the community safe and perform activities that are vital to our community they run a 24-hour business and as a result, most of these vehicles are not always on the property at the same time. This is 24/7. On average they have about four vehicles that are parked on this property. There's plenty of room on this property to park the vehicles and I will discuss that with you in a minute. There's adequate ingress and egress. They've been doing this for 23 years, safely. There's never been any safety incident at all in this neighborhood caused by one of their emergency tow truck vehicles in the last 23 years, which I think is really remarkable.

This business is operated by Robert and Berna, his wife. Berna sits in the house and take the dispatch calls. They don't have any signage out on Agua Fria and their son Robert

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has been a part of this business, has grown up there and is now working with his dad helping manage the vehicles and the employees they need to drive the trucks. In addition, some of the employees who drive these trucks take them home with them, so that's another reason you'll never find more than four trucks on this property at any give time, is because some of the employees take them home. But there has to be a core number of trucks on the property to be able to respond and to perform the services.

For example, for the County, in their contract they require 60 minutes onsite response time from the call. Anywhere within the county that require that those vehicles be immediately accessible so they can get in the vehicles and go to the scene of a crash or something. Also, as you can imagine, the emergency responder, the lower the time of response the more likely you're not going to have somebody die on you or sustain a serious or disabling injury. So the service that they perform is really kind of a unique business service to this community that is other than just selling goods in a wholesale-retail or in a retail shop. And so consideration should be given for that.

Robert's been a volunteer firefighter for most of his life. He was the chief of the local Agua Fria volunteer force for five years. The Anayas even housed one of the volunteer fire trucks on their property for a year in 1992. This is a family of service to the community. Over the last 23 years they have received community recognition and awards. You can go to tab 8 in the notebooks, and I will warn you about these notebooks. When you get to tab 5, tab 5 has subtabs one through 32 attached. So you don't want to get lost in 1 through 32 which is attached to tab 5. So when I say go to tab 8 you have to bypass that collection of 1 through 32 that's attached to tab 5, and then go on to tab 8 in this notebook. This is a recent, 2012 nomination by the Chamber of Commerce for an outstanding business award in this tab. This is again major tab 8, following the tabs 1 through 32, and it goes to 6, 7, and then 8. Also in this tab is a recent note from Robert Schilling who you may know is the Chief of the New Mexico State Police. Thanks so much for the tow and taking care of me last week. You're a great guy and run a great company. Enjoy and thanks for taking care of my troops out here. This is the type of business that's been operated in Agua Fria Village that improves this important community service.

I indicated that they currently have a contract with Santa Fe County. We've attached that as tab 6. Again, you're going to have to bypass the 1 through 32 of tab 5 to come to -- I'm sorry. I take that back. The County contract is under tab 9. So you need to go to tab 9, again, bypassing 1 through 32 in tab 5, to tab 9, is the County contract. It runs from the 2nd of June 2009 to the 1st of June 2013. You'll be able to locate it. In this contract you can see that the Anayas are required by the County to provide emergency wrecker and towing and related services. I'm now looking at page 1 of the contract's scope of work, subparagraph C. The contractor shall provide emergency wrecker and towing and related services 24 hours per day and seven days per week, 365 days per year at the request of the Santa Fe Sheriff's Office.

The contract -- and go down to E. The contractor is allowed a maximum 60-minute response time for contractor's tow truck to arrive at the arrest location. Response time begins upon receipt of notification of request for services by the Santa Fe Sheriff's Office.

So to park these vehicles somewhere else, out away from their property and have to go to get the vehicle at some other location and then respond would then be very difficult in some cases in some parts of the county impossible. So that's another reason that they've been

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operating this tow business on their property for the last 23 years is so they can provide that type of emergency response that's not only required by local law enforcement, it's required by the community to literally save lives.

Just to orient you to the property, I'm going to direct your attention to tab 4. This is the tab 4 that's before the tab 5 that has the 32 tabs in it. If you go to tab 4, the last page of tab 4 has a survey map of the Anaya's property on Ben Lane. This is the Anaya's compound and you will see to the left of this fold-out survey, Agua Fria Street and the yellow marked roadway is a dirt road and that is called Ben Lane, and it cuts through the middle of the Anaya family compound that has been there for now five generations. The Anaya's, Bernadette and Robert, own two portions of this property. The first portion as you come down Ben Lane is on the right. That is their residence. The next portion is on the left and that is an open area, a large open area, you're going to see photographs of that in a moment. And at the far end of that open area there is a line here which has been marked here as the Romero wall. This is where the neighbors to the right, on the right of this survey had erected a wall to provide them with privacy for between their property and the Anayas' property and presumably their trucks.

We believe this wall to have been built within the last ten years. You will see a circle where it's indicated that the Anayas park one or more of their trucks when they are unoccupied or unused in this big open area that is designated with the hatch marks as going to the Anayas at the end. There's no structures on it. It's an open area with a huge turnaround and you'll see photographs of that where large vehicles can come in, in order come into this lane and then back out somehow. They can come in and they can turn around no matter what size of the vehicle, around in this big circular area in the back, and then exit, and this is a question that's also been raised about fire access, access to the fire vehicles in and out of this property in case of fire. I will also discuss that as well.

In order to further orient you as to what we're talking about, if you could go to tab 3. This is right at the beginning of the book, tabs 1, 2, 3. This is another fold-out and this is an aerial view, I think from Google Earth, looking down onto their property. This again will help you orient as to what we're actually talking about. As you can see on the left side of this fold-out is again Agua Fria Road, and as you come up to – you see the number 5 that's circled down in the lower left-hand corner, if you then proceed on Agua Fria a little further, the first road on the right is Ben Lane and you can see it lightly marked Ben Ln. And you'll see where that traverses.

You'll see as you come into the road on Ben Lane then you first jog to the left on Ben Lane, then it straightens out and goes down past a large structure with a white roof on it. That's the Anayas' home. The purple roofed structure is their garage. So you will pass that down to the #11 that has been circled. That is the same circled area that I just directed your attention to on the plat survey. That's where the Anayas' vehicles are parked. So you can see, if you're standing on Agua Fria Road and you look to the right, or northward, you cannot see those trucks because the road, Ben Lane, is hooked to the left and then straightens out again. So all you can see if you're a commuter or passerby on Agua Fria is nothing. It's a residential area and the trucks are parked way back down on the end.

You can see that straight white line just to the right of the circled #11 and that is the wall that was constructed by the Romeros who are the chief complainants in this case.

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They're the ones who initiated this review, if you will, 23 years after the Anayas began doing business there. That wall was erected by them and to the right of them is their compound. And we'll see pictures of their compound where they conduct a business of their own. They rent property, apartments to people. And so we'll talk about that a little later.

So this is one way to help you orient to the total environment. With respect to the character of the surrounding community, the Anayas are not the only business in this immediate locale. As you can see on tab 3 that we just looked at those circled numbers are all businesses. Every one of them are businesses within this very immediate vicinity. And what we've also done, if you now turn to tab 5, which has the multiple 32, 33 exhibits attached to that, these are the businesses within a quarter mile of the Anayas' driveway, along Agua Fria, along and near Agua Fria in this area. And if you look, we've identified 32 businesses within a quarter mile in the Agua Fria Village of the Anayas' home and business.

And attached — those tabs are photographs of each of these businesses that are numbered within Exhibit 5. We provide the numbers, then you can go to these subtabs and you can see a little bit more about the businesses being conducted here. And there are just a few of these businesses that I would like to direct your attention to.

If we can go to subtab 3 of Exhibit 5, this is photographs of the Rodriguez Brothers Sand and Gravel Company. And as you flip through the pages, if you go to the second page of the exhibit, you will see this is a major business. Far greater activity involving large trucks, sand and gravel trucks. Go to the third page, the third photograph, we've got four trucks side by side, a very substantial size, similar in size to the Anayas' towing vehicles. There's another view of the Rodriguez Brothers Sand and Gravel. Several views, you can see the extent of this business. And this business is located in the immediate vicinity of the Anaya's business. This is on that Exhibit 3 fold-out. This is one of those businesses that is right there next to, the Anayas' business. On Exhibit 4 it's business #3, circled #3. As you can see it's within hailing distance of the Anayas' - where they park their trucks. You can actually see it from where they park their trucks.

If we jump to subtab 8, this is Scott's Garage. Talk about impound lots, it looks like an impound lot. Scott's garaging a lot of cars here, a lot of vehicles. So this is the impound lot type situation that naturally the Agua Fria Village was seeking to avoid in 1989, but this is what it then looks like.

If you go to tab 9, this is within a very short distance of Ben Lane. This is the Padilla Bingo Buses business, where they operate bingo buses that transport people to and from their bingo hall. If you go to subtab 12, this is Santa Fe Concrete. This is as you can imagine utilizing very large concrete trucks that tow large concrete trailers that are very heavy and occupy a lot of space and movement within the [inaudible]

Exhibit 13, August Construction Company, and if you'll just thumb through the photographs, you'll see — you're going to get the flavor of the character of this community and how what the Anayas are doing here is consistent with that character. If you just thumb through these photographs you get a quick picture of it.

If you go to subtab 15, we have Cassidy's Landscaping. Again, multiple vehicles parked here. So of them with large trailers and plowing vehicles for landscaping, small tractors.

If you go to Exhibit 23, sub-exhibit 23, this is the property of Mr. Larrañaga's brother.

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where they hold rodeo events on at least a monthly basis, and when they have these rodeo events they have over 200+ people come with their vehicles, families and that creates blockage of traffic, quite a stir in Agua Fria Village and I don't believe Mr. Larrañaga's been investigating them lately.

Number 26 is a combination of businesses. This is owned – these are four businesses owned by four brothers, all located within the same general area. Padilla's Towing, Quality Towing, A-1 Towing, and Tony's Towing, all belonging to the four brothers, and they have an impound lot in addition to towing facilities. So if you just look through some of these photographs you can see that there's a lot more going on here than there is on the Anayas' property.

Subtab 27 is another wrecker service. This is the Flores Wrecker Service and again an impound lot. So they're storing vehicles on these properties as well as storing their own tow vehicles, they're storing other people's vehicles on these properties.

Subtab 28 is Chavez Septic. Again, large septic vehicles. You all know what those look like when they pull up to drain a septic tank. This is the character of this portion of the Agua Fria Village. This is the character of their family businesses that's being conducted there.

29 – 29 is the Romero property, and we've looked at that on the plat. This is the property of the people who have initiated this proceeding in fact. As you can see, the first photograph is looking from the Agua Fria River towards – this is the Romero compound. The Romero compound is blocked by trees that run along the wall that they built and the Anaya property is out of view in this photograph. It's on the other side of the Romero compound. The next photograph is a shot of the compound. Again, there's no view of the Anayas' property from this perspective, from the river perspective. Then if you go down about four photographs you come to a photograph of part of the Romero compound that is the apartment business, the rental business that they conduct on their property.

The next photograph and the third to the last photograph of sub-exhibit 29 is a view, an elevated view of the Romero's garage – now, this is on the back side of the photos you were just looking at, and what you can see here is you can see the wall that they have constructed, which by the way, the right-hand portion of this wall – what you see on this side of the wall is the Anayas' property, that open area, part of the open area I was talking about. That wall blocks the easement of Ben Lane. The easement of Ben Lane as I showed you on that plat, goes through that wall. That wall has been blocked by the Romero's, and there's been no vacation of the easement that's been recorded of record. So that easement has been blocked. So if the Anayas wanted, or a fire truck needed to get through from Agua Fria to the river or any structure along the way, ordinarily, if that easement were open like it should be, they would go right along that easement and keep on going, but at some point the Romero's blocked this.

The next photograph is again another photograph of their compound and again, you can't see Anayas' vehicles, you can't see anything on the other side of their wall, which is on the opposite side of this photograph. And yet another photograph.

CHAIR STEFANICS: So, Mr. Bennett, are you almost finished so that we can hear the rest of your applicants?

MR. BENNETT: Yes. I'm getting – I just wondered if you could direct your

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attention to exhibits 30 and 31. We've got more construction companies and Santa Fe Frame and Auto, again, large vehicles. Let me try and move a little faster.

CHAIR STEFANICS: Right. And just remember, you'll have a chance to answer questions as they come up after the public hearing as well.

MR. BENNETT: Okay. The other thing I would just like to bring up quickly is I think I've pretty well discussed the character of the surrounding community, is if you look at tab 11, it's entitled, and this is in right at the back and it has six subtabs. It's the last major tab with six subtabs, and it's the table of contents to this, tab 11 is entitled to impeachment of opposition. And Ms. Kosh, my colleague is going to discuss the legal issues surrounding all of this including the issue regarding the ingress or the access to the Anayas' property and the other homes in that vicinity by a fire truck. So I'm not going to discuss that.

But at the hearing before the land use committee where this application was denied, I believe 5-1, there was some testimony given by opponents to the Anayas' application that was not quite accurate. For example, tab 1 of tab 12 – excuse me, I take that back – tab 2. Rosemary Medrano testified that this business use was a bane to her ownership of property in that area. Well, if you look at – as it turns out, Ms. Medrano only owns vacant land near the Anayas and Ms. Medrano lives on Botolph Road. And what we have here is a photograph of her residence on Botolph Road, there's a mailbox, 2904, and the last photograph in this is the vacant land that she claims is impaired or its use impaired by the Anayas operating of their business.

The other thing that is of note, it was at the hearing of Robert and Diane Roybal testified that they – actually, if you go to the last tab of this book, tab 6, there are two pages of the testimony given at the last hearing that I would like to direct your quick attention to. The last page, which is the last page of this notebook, talks about Robert and Diane Roybal's testimony. Ms. Roybal says she neighbors the Anaya property and her kitchen window looks out to their trucks. This is true, but she doesn't live there. She – her property is, number 1, not within 100 yards of the Anayas' property, and number 2, she lives in Rio Rancho and she rents out this property. So the impression was given to the committee that she was somehow offended by the view out of the kitchen window.

The other testimony that I want to draw – while we're on this exhibit is the status of Mrs. Romero, who is one of the, or the – her and her husband are the main complainants against the Anayas' ability to operate their business. Some of the things she said, on page 25 of the testimony, which is the second to the last page of this book. She said the Anayas are being investigated by DOT because it's dangerous for those big trucks to turn off Lopez Lane onto Agua Fria. It's not true. It's simply not true. There's no investigation by DOT of anything and Mr. Anaya can testify to that if necessary.

Ms. Romero said – all of these are highlighted. One of Anayas' tow trucks was last registered in 2006. It was not insured, knocked down her wall in January. Now, that reference is to why we're here. What happened was that wall between the Romero property that I pointed out to you, which is the end of the Anayas' property, it was an adobe wall that was erected by the Romeros within the last ten years, one of the Anayas' trucks accidentally backed into and collapsed a portion of it. And that's where all of this came from. The Anayas did have insurance and were trying to get the wall repaired, wanted to get it repaired. The truck damaged it. And got an estimate out and were all ready to go and an agreement to get it

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repaired and hire somebody to do it when a demand was made for \$7,000 by the Romeros to pay for the wall, which was of course totally exorbitant.

But the Anayas were insured, but they had a deductible. So they were trying to fix the wall within their deductible which they had to pay anyway, so this is what happened. We're sitting here tonight because of that incident.

Then Ms. Romero questioned Mr. Anaya's business ethics and was concerned that he has not been paying taxes while he continues to the deterioration of Agua Fria. Mr. Anaya pays his taxes, property taxes and —

CHAIR STEFANICS: Okay, we're kind of diverting from the presentation here.

MR. BENNETT: Okay, well, you can see this in here, which is important. The last thing about impeachment is the way that this has been handled by Mr. Larrañaga. I met with Mr. Larrañaga right at the beginning of this and he told me that the business in his office is essentially complaint-driven. So if you're not complaining then he's not going to make sure that you're complying with whatever rules that are out there that the County has. So all he does is respond to complaints. And this was one. And so he responded to this complaint and not only responded to it, inappropriately responded to it. He comes on to the Anayas' property. There's an affidavit from Mr. Anaya here. He will come on to the Anayas' property for really no good reason other than to drive up and down Ben Lane and sit on Mr. Anaya's property. He has told other supporters or neighbors of Mr. Anaya, family members, that if you support Mr. Anaya's application that your property taxes will go up. We have that in Mr. Anaya's application. Bernadette's brother was actually told that, that if you somehow support this you're going to have to actually give up property. I think they're talking about creating a hammerhead where one doesn't need to be created.

So there's been personal influence into this when at the same time all of these other businesses, including his brother's rodeo is not being vetted for compliance with the County's rules and regulations. So I would move, at least I'd have this motion on the record that Mr. Larrañaga and the land use Commission that was investigating this application be disqualified and that their input into this be stopped from making the arguments they're making. This petition should be denied. But all of that documentation is in this notebook. There are legal issues that I'm sure the Commissioners want to hear about briefly. My colleague, Ms. Kosh, will advise you of those.

CHAIR STEFANICS: Thank you. So let's here from Ms. Kosh and the applicants, and then if the Commissioners have questions now they might ask them, or then we'll go to the hearing of the pros – the opponents and the supporters, and I'm going to ask Mr. Larranaga in a few minutes to speak, as well as Chief Buster Patty. Ms. Kosh.

ITALIA KOSH: I'll try to be brief. County Commissioners, I'm Talia Kosh and I represent Robert and Bernadette Araya. [inaudible] shorter version of what is in tab 2, their letter of request and the supplement to that. So what is the issue here? Parking up to eight towing vehicles, but really at most times, moments of the day and night, about four and dispatching those vehicles from their residence.

First I'm going to talk about, going to demonstrate how the Anayas are grandfathered in and therefore no variance is needed. Second, in the alternative, I will demonstrate the current use of the property is a permitted use consistent with the character of Agua Fria

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Village Association. And I will also demonstrate that the current use of the Anaya's property has not resulted and will not result in any conditions that are injurious to health or safety.

We've already touched briefly on emergency response concerns so I'm going to say a few things about this, but the ability of their towing service, which has written and verbal agreements with several government agencies to respond quickly to emergencies is a public interest concern. Regularly, the Anayas are called by emergency responders who have no other towing company alternative due to the Anayas' range of towing option. This came into play recently. I'll just give you a couple of examples. When the Anayas were called in the middle of the night by emergency dispatch in northern New Mexico about four hours away from Santa Fe because there were no other towing services that would be able to handle a large wrecked semi truck off of a major highway. Again, recently the Anayas moved a City garbage truck that had crashed into a riverbed and no one else could get it out of the riverbed.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Commissioner.

COMMISSIONER MAYFIELD: Just real quick. The Anayas have a Class D?

MS. KOSH: Yes, Class D. Also, even Barbara Salas, the Chief of the fire

department has given me permission to tell you that Robert Anaya and his business are incredibly valuable to the community and have trucks that perform services that no other towing company can perform.

Also, there's just a few constitutional issues that I'd like to touch on. Finding a site to lease and park most of these eight towing vehicles offsite from their property would be prohibitively expensive and would effectively destroy their ability to make a living in the tow truck business after 20 year of service. Further, as a tow truck business in a new place the Anayas would have an even more difficult time to get a variance because they would not be faced with a situation which I'll discuss briefly where the use could be deemed permissible within the Agua Fria Village Association and this would effectively shut down their business.

Should the use be disallowed by this Commission this would effectively be an

arbitrary denial of equal protection, treating the Anayas differently from similarly situated businesses and individuals. Also this differential treatment would have no rational basis as the Anayas have been using their property without issue for over two decades. Further, the Anayas have many contracts with governmental enforcement agencies and other private parties and these contracts would be nullified by this denial, and that is also a denial of the fundamental right to make a livelihood and the right to contract for personal employment.

I'm going to quote from a United States Supreme Court case. Nothing is more clearly settled that is beyond the power of the state under the guise of protecting the public arbitrarily to interfere with business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.

Further, in support of this I'm going to just talk briefly again about how the Anayas are grandfathered in. Mr. Bennett already discussed how the business was purchased, and I'd also like to draw your attention to tab 6, which is Mr. Mee's letter from the Agua Fria Village Association. It's the major tab 6. It's a letter from William Mee, the president of the Agua Fria Village Association. I'll call it AFVA. Mr. Mee states that also, and I'm quoting, also during the community planning process a number of businesses which have industrial land uses not compatible with residential land uses were grandfathered in, such as Anayas'

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Wrecking, L & L Portable Toilets, etc. He lists several businesses.

According to the AFVA, the Anayas' Wrecker business has been grandfathered in along with many other businesses, so many that he did not even begin to list all of the businesses that are grandfathered in within this village. Also, they're very much a part of this traditional and contemporary community of the Agua Fria zoning district, and in going back to William Mee's letter, he states parking Anayas' Road Runner Wrecker Service towing vehicles also have been parking them consistent with running their business at 2253 Ben Lane is not inconsistent with the character of Agua Fria Village and there are many mixed-use, family-run businesses within the village. This effectively demonstrates permissible use.

So the only objections to the Anayas' towing business should have been made when the Agua Fria Village Community planning process was occurring from 2003 to 2006. As Mr. Mee states in that same letter, during this process it would have been reasonable to discuss any objections to the Anayas' Roadrunner Wrecker Service land use as being incompatible with the residential land use around it. However, I recall no such objections or protests. This is also in his letter. Neither the Romeros nor anyone else who currently stands in opposition to the towing vehicles ever made objections during this time, even though they were a part of this planning process and they could have easily voiced their objections. They should now be stopped from making such objections after over two decades of the Anayas parking their towing vehicles.

Just quickly, I'd like to point out that the Anayas' use of the property is also consistent with the Santa Fe County Sustainable Growth Management Plan. This mixed-use case is not out of character for that plan and according to the plan, compact mixed-use development served by adequate facilities are a priority. Due to 2.2.4.1 of this plan mixed uses provide for a variety of uses within traditional neighborhood and village type settings and they're integral to achieving appropriate land use and transportation goals and objectives. And the Anayas [inaudible]

I also like to point out a few more statements by the Agua Fria Village Association because I think it's appropriate here. In their blog they state that the residents of AFVA are committed to maintaining their traditional way of life and protecting their independence from Santa Fe. As the Agua Fria Village Association states in its blog there is no need to better understand traditional communities in rural areas and the slow and steady growth they have had as each generation comes of age and wants to do their own thing.

Further the Agua Fria Village Traditional Community is based on three main elements: centralized purpose, cultural function, and mixed uses. The mixed uses is an integral part of the Agua Fria Village Association. Residents have extended families to provide for, childcare and supervision. Many residents are from multi-generational families that have been on their land for years. A goal of the AFVA is to pursue a diverse and sustainable local economy for traditional communities. The Anayas are exactly this type of family and business discussed in the AFVA blog. They also provide multiple family members with employment opportunity, daily childcare. They are the quintessential Agua Fria Village family business.

The Agua Fria Development Review Committee would normally be the proper authority to bring this issue to. At the current time the AFDR is on hold, according to meeting minutes from the Agua Fria Village meeting minutes since April 2, 2012. That's

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attached as an exhibit to the supplement. These minutes also state that the AFVA, the Agua Fria Village Association will be taking on the role of Agua Fria development review. These minutes also state that the AFVA took on the new role of planning for the THC area. This means that development is reviewed and approved by the AFVA, then mixed use becomes permissible use.

These minutes clearly demonstrate, along with Mr. Mee's letter that the AFVA is standing in place of the AFDRC has previously approved all the Anayas' business uses of their property as mixed use. Therefore a variance is not required to continue this permitted use of the property for just parking their vehicles and taking calls for their business. I'm getting close to the end.

Also the current use of the vehicles existed during the planning process in meetings from 2004 to 2006. The Anayas' use of the property was also approved by the AFVA. And the County's plan also speaks – the County will honor existing community plans and ordinances and support community planning and in this vein the County should honor this process and procedure.

Also, in the alternative, should the Board of County Commissioners find that the Anayas current and past use of the property is not permissible use and is not grandfathered in it should be considered a conditional use of the property which the AFVA could also review. So now we're just getting to the variance argument. As briefly as I can, but it's also very important as a part of the agency's recommendations. The variance is not needed by should the Commissioners find that the storing of eight towing vehicles not be permitted or conditional then we are requesting a variance. And the only vital part of that is the parking of the eight vehicles. The Land Use Development Code does not specify a maximum use of commercial vehicles that can be on the property at a given time, so on its face there's no specific violation of this code.

Multiple factors may be considered in deciding whether to grant a variance, including the economic detriment to the applicant. If the variance is denied the financial hardship created by any work necessary to come into strict compliance, and the characteristics of the surrounding neighborhood, which we've already discussed.

As you've seen, even without the pre-approval of the AFVA the characteristics of the surrounding area make it appropriate to grant this variance. The commercial businesses have evolved over time to create a more mixed use, commercial and industrial area. The Romeros who are the ones who brought this complaint utilize a completely different road to access their house and cannot see any vehicle enter or exit the Anayas' property or Bens Lane. This does not affect them.

Granting the variance would result in a net public benefit and public benefit is another factor that may be considered in the granting of a variance. The agency's recommendations that the entrance to Ben Lane not meet fire code and the only option for the Anayas is to give up a hammerhead are not accurate. The hammerhead option is not required and should be the last alternative considered. Bens Lane meets all requirements and is up to code. It is clear from the photos Bens Lane meets the requirement of a 20-foot entrance. It's actually over 20 feet. Further access does not meet the required 28-foot radius is also inaccurate and you can see the photos on tab 7 that we've actually taken measurements of that area. To save time we don't have to go through those.

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MR. LARRAÑAGA: Madam Chair, they listed several businesses, some of which are master planned, some of which are non-conforming, some of which I'm dealing with actually right now. The conflict that they listed is my brother having a roping arena that's been around for 20 years. He has a jackpot once a month, about 40 to 60 people, and he's always had steers there. He has practice twice a week. I don't see where there's a conflict on his property. I don't own the property –

CHAIR STEFANICS: So the issue is his property is in the city.

MR. LARRAÑAGA: Correct.

CHAIR STEFANICS: Thank you. That's where the conflict doesn't arise. Mr. Patty, could you come forward please? Mr. Patty, just in general, and other Commissioners might have questions, do you have anything that you want to add? You have a fire report in here in our book on pages 63 and 64. Anything that you want to highlight or bring to our attention?

BUSTER PATTY (Fire Department): Madam Chair, Commissioners, when this was brought to the Santa Fe County Fire Department for review for the variance for the commercial use we reviewed it like we do any other commercial business and that basically is for access or any kind of fire requirements per the 1997 Uniform Fire Code. In the 1997 Uniform Fire Code it explicitly states what size the fire lanes are to be, what the turnarounds, what the lengths of the turnarounds are. We've mentioned several times before, anything over 150 feet long then does require a turnaround.

There is on their property, on the Anayas' property, on his private property in the area where he turns his trucks around, yes, we can turn around, but it is not designated as a fire turnaround, if it got built on then the turnaround was gone. We re-reviewed and went out there and had a look at the property outside of a cul-de-sac turnaround, that was in our original letter, a hammerhead could be built to be able to turn around in this lot. It is a problem if we have to drive down in there, even if they placed a hydrant. You pull the hose off the back of the truck. So if we pulled down in there we have to turn around somewhere, hook on the hydrant and pull out. Otherwise we have to back back down in there, which is more than 150 feet long.

The access going in off of the main road is what we measured was just a little bit under 20 feet but there is no radiuses on the turns. That is also in the Uniform Fire Code of 28-foot inside radiuses on a 90 degree turn, on a 20-foot wide road. If the road was wider then those radiuses would be cut shorter.

CHAIR STEFANICS: Thank you. There might be further questions for you so stick around. Okay, we're now at that point – how many people are here to speak in support of this application? Okay, so let's hear the supporters first. Are there four or five people who wish to speak? Whoever would like to speak in support would you please come up so you can all be sworn in together, and then we'll go to the opponents in a minute. So there's five of you, right? Anybody else who wants to be sworn in at this time?

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CHAIR STEFANICS: So when you speak please identify yourself by name and address for the record and stay right up here and make it as short as you can. Let's hear. We're very happy that you're here to comment. This is part of the public process.

[Previously sworn, Robert Anaya, Jr. testified as follows:]

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ROBERT ANAYA, JR.: My name is Robert Anaya, Jr. My address is 2253 Ben Lane, Santa Fe, New Mexico, 87501. Basically, the only thing – business operations we do out of that area – my father owns the company. That's obvious. We're just asking to park our trucks there, answer our phones, keep our books, that's it. Our storage facility for the cars we tow in is at 2876 Industrial Road. It's in the city. We meet all city requirements for that. For the past 23 years we've just been parking our trucks there as we take them home and that's about it. As for an eyesore, I don't think they're ugly but those are my trucks, so it's my preference.

As for safety, those trucks are as big as any fire truck going down the road so if it's unsafe for my trucks to be driving down the road it's unsafe for the fire trucks to be going down the road. So if it's a problem for our trucks to get up and down Agua Fria whatever way then Agua Fria needs to be widened up because the fire trucks, garbage truck, all them run down those roads too.

So as for the difference in them, the only difference is our trucks are owned by us and not a government. They're there to provide a service for you, anybody out there. If you need our service we're there for you. We provide service 24/7. Not now because we're here but other than that they're always available – day, night, 24 hours, Christmas, Thanksgiving. You name it; we're there. So, thank you.

CHAIR STEFANICS: Thank you very much. Yes sir.

[Previously sworn, Antonio Montoya testified as follows:]

ANTONIO MONTOKYA: Hello. My name is Antonio Montoya. I live at 2010 San Ysidro Crossing right there in the village itself. I seen the damage of the wall. I offered to fix it. The estimate was way out of line. I said, hey, I can do that for \$300, \$400. I've known Robert Anaya and his family for many years. As a matter of fact both sides of the family. He's not only a personal friend but a lot of these emergencies he would call me to go and help him. So now that my profession is so low, because I do remodeling, I do a lot of masonry.

So I offered to fix the wall and I told them, hey, I can do it for as low as \$350, \$400. He has all the material and everything. It could have been done in a timely fashion without any incident or anything else. So I think it's a shame, because I give him a lot of respect for the things that he does for the community and for me, and my brothers, he's helped us out with just work. Because right now, I'm facing – if I don't get no work eventually I'm going to be homeless. So he provides much more on a personal level, and I just want to make that known. Especially on his emergency services that no other wreckers here in Santa Fe or even 100 miles closer. I mean Albuquerque is the closest one. And when he calls me I promised that I would be there for him. And that's why I want to be here. Thank you.

CHAIR STEFANICS: Thank you very much for coming. Yes, sir.
[Previously sworn, Charles Smith, testified as follows:]

CHARLES SMITH: Yes, my name is Charles Smith. I run C. Smith Construction Company. My address is #2 Entrada de Santiago, Santa Fe, New Mexico, 87508. Robert Anaya asked him to go give him a bid, which I did and I went to do the job and I was chased off by the – I guess [inaudible] or whatever, by him, and he actually threatened my guys. Which we actually walked off at the time, due to the fact that we don't to see fighting or anything going on because of that. Since then, [inaudible] about what's

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happening. I feel it's unfair that you guys, 23 years come out to take something away from them that's actually provided a good service for this community and he's been there to help each and every one of us. And everybody's been helped once in a time.

So I don't think that what you guys are looking at -- I mean just to look at the truth and see the person for what he is. And his business is a good business and it should be around and left the way it is. It ain't hurting nobody. It never has, whatever the case may be with his family, should be just between them. Robert Anaya is really good people and his business has been very supportive for the community and for [inaudible] Anyway, he's been there for us; we should be there for him. That's why I'm here tonight. Thank you.

CHAIR STEFANICS: Thank you very much. Yes, sir.

[Previously sworn, Mario P. Montano testified as follows:]

MARIO P. MONTANO: Hi. My name is Mario P. Montano and I live at 28-B Prairie Dog Loop, which is right across from Agua Fria park. Obviously, this is my uncle and auntie. It's been in the family, obviously, my whole life, 29 years. I do like he just said, 23 years he's had his business, always looking up to him as far as dedicating his time. Leading a different life than a lot of kids did here in New Mexico, in Santa Fe, it was basically Santa Fe, small community, not really not much to do. He provides a service as far as his time and to the school, with us growing up. He just does a positive impact as far as me growing up in a positive way. So I just think what you said, in 23 years, one complaint and all of a sudden it's just an uproar out of basically nothing. You know what I mean? So I just want to say I support him and I love my family. So thank you.

CHAIR STEFANICS: Thank you very much for coming. Yes, ma'am.

[Previously sworn, April M. Anaya testified as follows:]

APRIL M. ANAYA: Hi. My name is April M. Anaya. I'm a daughter of Robert and Bernadette. My address is at 3019 Primo Colores, Santa Fe, 87507. I would just like to say I'm in support of my family because we have had 26 years of my life, 23 years was all I had with them before they started this business. They have run it 24/7, 365 days a year. I've given up many birthdays, many holidays, just so my dad could be out there serving the community, and now I'm giving up my brother as well. So I'm just here asking that they can continue to keep their trucks, which they are beautiful trucks; they are not eyesores and, on their property, which they have been like I said for 23 years. So I'm just in supportive of them.

CHAIR STEFANICS: Thank you very much. Yes, sir.

[Previously sworn, Patrick Romero testified as follows:]

PATRICK ROMERO: Hello, my name is Patrick Romero. I'm in support of the Anayas' business. I understand it's late and I'll be very brief. I ask for five seconds of your time. Turn around and reflect upon the drawing and the writings on the wall behind you. It states equal justice under law, and I do realize and understand this used to be the old courthouse. But it says protection of property, religion and language. Madam Chair and County Commissioners, you have the opportunity here today to protect someone's property. Please do so. Please be in support of this.

CHAIR STEFANICS: Thank you very much. How many people are here to oppose the application? Could you raise your hands? Okay. And are there -- there were six people who spoke in support, are there six people who want to speak in opposition? No, you

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have to be on the record, so just a minute. Anybody who wants to speak in opposition please stand up and come forward so you can be sworn in. We're going to keep it to six since there were six on the other side. So we've got six. Great.

[Members of the audience wishing to speak were administered the oath as a group.]

CHAIR STEFANICS: So if you'd please introduce yourselves by name and by address and we'd love to hear what you have to say.

[Previously sworn, Patrick C de Vaca testified as follows:]

PATRICK C DE VACA: My name is Patrick C de Vaca. I live at 2249 Ben Lane. I'm Bernadette's brother and Robert's brother-in-law. I just wanted to set things straight. The property they're showing towards the back, their property is on the left and my property is on the right of theirs, where they say there's supposed to be an easement. I don't know what arrangements my grandma made or my grandpa made [inaudible] when we were young. That's up to them. But if they knew then [inaudible] an easement there, it's not affecting their property, it's affecting mine.

CHAIR STEFANICS: Okay. Thank you very much.

MR. C DE VACA: That's all I needed to say.

CHAIR STEFANICS: Okay. I appreciate your being here to say that. Very much. And what's your address again?

MR. C DE VACA: 2249 Ben Lane.

CHAIR STEFANICS: Okay.

[Previously sworn, Georgia Romero and Henry Romero testified as follows:]

GEORGIA ROMERO: Georgia Romero, 5124 Avenida de Sesario.

HENRY ROMERO: Henry Romero.

MS. ROMERO: I guess the first thing we should clarify is the easement that Mr. Bennett brought up. Back in 1987 there was a quiet title deed signed by the courts against – for Bernardino Sandoval. And the easement was personal to him so when he died we legally had the right to build this – well, we fenced it off first. To fence off the property so that no one could die. It was actually our property. We paid for even the easement on the land. So then in 1989 Mr. Anaya cuts the fence while we're at work and throws in like 20 cars. So we're the ones that reported him the first time that he was denied and he was hauling – he had a stack of wrecked cars and I think he had like six tow trucks at the time.

Again, back in like November – between September and December, all of a sudden we noticed these big trucks against our wall, and every day, every time they would take these trucks out, they would tap our wall to stop. Well, one day our wall said, no more. On January 13th. They put a 23-foot gap, which is about the size of what the podium you're on, 6 feet by 4 inches. There's photographs in your packet that show his tow truck backed into our wall. To get it fixed, you heard statements from all these people and Mr. Bennett, and at the last meeting they said they could have fixed it for \$200, \$500, well our insurance, home insurance had to fix it and it came in at over \$7,000.

I have insurance paperwork to prove it. Mr. Anaya has evidently received it. Otherwise he wouldn't come up with the figure of \$7,000. And then if you look at your packets from the County, the County packet, there should be pictures of what it looked like when the – when they went in and cited them for illegal parking and for not having a business license or a variance on the property, it was loaded with towed cars and Mr. Anaya corrected

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himself. At the last meeting they kept saying eight trucks. There's actually ten. Mr. Anaya corrected himself at the last meeting. He said there were ten tow trucks between 20 and 30 feet long.

Today I went out there and I looked. There were nine vehicles, two trailers, an RV and seven tow trucks and two of the tow trucks are parked in that 30-foot or 20-foot easement that they keep talking about. He constantly parks cars there. They're talking about a utility easement. Mr. Anaya blocks our gas meter with his vehicles. They're his personal tow trucks, which I think is tow truck #2 on the list he gave the County. On that list he lists eight trucks and he says there are two drivers. And yet his attorney wants to say that only four trucks are there at all times. It's not just four trucks.

These trucks run 24 hours a day, seven days a week, 365 days a year. The only difference is these tow truck drivers take a day off. The immediate area, the immediate neighbors, we don't get a day off. They also testified at the last meeting that they don't let these trucks run for hours; they do. We have the diesel fuel fumes. We have dirt. We have fighting. We have lights. We have noise. There is no safety. And the road they come down off of Ben Lane, to get there you have to come off of the four-way stop on Agua Fria and Lopez Lane. So they turn into Agua Fria, come down to go, drive into Lopez Lane, but before they do that they have to go into the left lane because their trucks are so big they can't make the turn. Then they back up into the traffic.

What happens when a school bus hits that? An emergency vehicle? One of these fire trucks? A police vehicle? People run the four-way stop all the time. We're going to have a person beheaded just on Agua Fria itself. It's not wide enough to accommodate the size of trucks they're driving.

On top of that, the truck that hit our wall, it's WD6187 is the license plate number. It hasn't been licensed and it hasn't been registered since 2006. It's still on the road constantly. To get down from Lopez Lane just onto Agua Fria we witnessed that truck making three vehicles that were going up Agua Fria towards town, had to back up to let that truck go down the road. Then they go down the road and again, into that left lane, backing up and going down into Ben Lane.

We have reviewed the piece of property and the fact that he has to have that 100-foot radius, and if you look at the plat, just looking at the plat, you know they don't have the property with a 100-foot radius that the fire department wants, plus the ten trucks they want to park there.

Another issue we're having is the rodents, which is going to even get worse because we were doing the feral cat program for the Santa Fe County. Last year we had 27 cats fixed. We trapped and had them fixed. We were feeding them; they were fine. They have been poisoned. And we've taken them in to be euthanized because they're stumbling back into our yard. So now we really have a problem because all these cats are gone that weren't bothering anybody. And the majority are coming from the other side of the Anaya wall.

If you could just give me a second here. When they talk about this plat, this map that they showed you, we're over here by number 11 and you see between 7 and 11, that's the middle of that property. Technically, that's the property they're talking about. They're talking about this property over here by number 11, against our wall, because the property's been subdivided. That's when he started to park trucks there.

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MR. ROMERO: He hasn't been owner for 23 years.

MS. ROMERO: He hasn't been doing it legally for 23 years because in 1989 in this same room by the committee and told that he had 45 days to pull out the wrecked cars. Well, he never bothered to get a business license. He never bothers to get any kind of permit to park trucks there. So yes, he's been there probably for 23 years some of the trucks, but there are no towed vehicles. This is a picture they're saying from 2005. So where are all these things that he's talking about. But now he's all the way back against the privacy wall that borders our property. There is not enough room for a turnaround and there's not enough room for ten trucks. There's no way he can do a master plan or a development plan. There is no place. There is no more room.

And it wouldn't hurt him to relocate and get himself the proper parking lot that he needs but he's afraid of variances some place else. These people on the internet make \$500,000 a year is what they're recording as income. And the nuisance – this is what they are. It's the unlawful or irresponsible use of one's own property in a manner that causes such inconvenience, annoyance or discomfort as to injure or damage the rights of an other person or the public in general.

We have people with asthma, emphysema, living there. We have small children running in their tracks. They burn down that road, Ben's Lane. They peel out. They make dust. They're abusive to all the neighborhood. You can't hang clothes out on your clothesline, because I have a clothesline right next to the wall, which will show in the picture where he knocked down our wall. And if you look at the plan again, he doesn't measure up. He doesn't have it. He just doesn't have it.

We are sixth generation on our land and we did buy from Bernadette Anaya's grandfather. My great grandchildren will be seventh generation. And we take a lot of pride in what we did. We built a beautiful home. We donate to the community. We're in the Agua Fria Association also. We've done everything we have to to make a better life for us and our family. We have title insurance. We have an abstract on our property and the reality of it is it's they've just outgrown the area. They just don't fit there. They started out with six small tow trucks. Now he's got two sleeper trucks, a big truck that hauls semi-trailers. And he's not only parking in that location, he also parks up on Prairie Dog Loop, right behind Nancy Rodriguez. All those semi-trailers and junked buses, and everything – the burnt cars, everything else is his.

He's got a lot there; he's got a lot behind our house. He's got a lot on Industrial Road which he testified was 1 1/2 to 2 acres. It's only .4 of an acre and it's packed. Vehicles in that lot have not moved since January.

But this isn't about what he provides to the community. He does nothing for Agua Fria. He hasn't been licensed. He pays no taxes.

CHAIR STEFANICS: Could you summarize?

MS. ROMERO: Excuse me?

CHAIR STEFANICS: Could you summarize, like end your comments?

Because there are other people waiting.

MS. ROMERO: Okay. This isn't about what the – the safety issues is what they're bringing up. It's a variance for a residential area with ten residents that he has to come right past their house with a 20-foot easement to the very back property. The fire department

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can't get in there as Mr. Patty testified. It's not about the safety issue. It's about the variance. That's what we're here for, if he qualifies for a variance or not. If he's able to develop this land or not, if he should get his variance tonight, which is an impossibility. We're not giving him any land. No one else here is. No one is selling. Thank you.

CHAIR STEFANICS: Thank you. Did you want to say something, sir?

MR. ROMERO: Just the fact that we don't have nothing against -- we have no objections to what they want to do. Bernadette is my cousin and to me she is my cousin, my blood. We've been family for years and her grandfather sold that property to me. He came to my property -- I asked him when we first got married in 1966 if he's sell me property. He said, no, mi hijito, park your trailer there. You don't have to pay me. Just park it. I said no deal. I want to own. So we let it go at that. Seven years later he came to knock on my door and asked me, ¿todavía quieres comprar? Do you still want to buy? Yes. Vamos. He paced off what he wanted. He buried a stake. I had it surveyed and I have the [inaudible] in there that we paid him for four years, the payments that he wanted. The way he wanted it down. He only wanted so much a month, but he wanted it his way. So I honored that. He's my great uncle. My great grandfather owned that property before my Tio Benjamino owned that property, my grandma owned it first. They swapped properties. By handshake. I bought that property from my tio.

My great grandfather, I named that road, Avenida de Sesario, in honor of my great grandfather, because I stand proud on this earth. And I protect my family, my daughters, my grandkids. This is their future. This is why I'm standing here, to protect my family like he stated. We're here to protect our family. Well, fine. I have nothing against what they're doing but they're not doing it properly. As they say, 23 years? Negative. Only in the past couple years they've been parking up against my wall. And they say it's not an eyesore. Well, maybe it's not an eyesore but it is affecting my view. That's why I had to construct that type of wall that I did, for privacy. We have a personal clothesline that we use, because we're nostalgic. We're still from the old school. We hang our clothes on the clothesline.

My wife has to rewash sometimes those clothes because it was full of diesel fumes because [inaudible] If the clothes are wet and the fumes are coming over, [inaudible] she has to rewash the clothes.

On January 13th when he backed up into our wall, my wife had just removed clothes off that clothesline, and it happened within 15 minutes. She would have been under that debris. I'm sure you have a picture of our property, or our wall. If you need it I can show it to you. I don't know if you have it in your packet.

CHAIR STEFANICS: We have it.

MR. ROMERO: Okay. So that view right there. Evidence that he destroyed our table, our chairs. We used to sit out there and watch the sunset, because sit out there. That's our private quarters. Our clothesline was damaged and not repaired. Our tables and chairs were not repaired. My lawnmower. He claims that I hit him with a hammer. That's absurd. The debris was on top of my lawnmower. The pictures are evidence. The evidence is right there. What more do they need? What does Mr. Anaya need? Does he need to be grabbed by the hand and shown, this is what happened when you backed up into our wall? That's my property. And I stand proud to say that we built that home and it's not an adobe wall like he stated. It's not a wire fence either. It's 8" masonry constructed, well constructed.

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Even my insurance adjustor that came by to give us an estimate, he stated that's a very structurally sound wall to have caused that kind of damage and not destroy the whole thing. The whole thing could have toppled over. But no. Negative. Between the two pilasters that are reinforced with concrete and rebar, it didn't budge it. But he's still, the insurance claim, but he put stress on the entire 80-foot span of it. That's why it came out in the photo as it did. Repair the wall, repair my table and chairs. My brother fabricated those chairs and it was a gift to me. Those are my personal property. He [inaudible] repair. He states that he wanted to repair it, he asked me for a list of materials. It happened on a Friday 13th. Over the weekend Bernadette's dad passed away so I gave him that week out of respect. I didn't bother them, I didn't go approach them. I gave them that week out of respect, because her dad just passed away. I didn't want to go put any stress on them. So I fell back. Out of my kind heart I held back.

The following Saturday I went by to ask him, I had my list. I had it in my back pocket. She asked me. Give us the list of the material and we'll pay you for the material and you fix it. When I went there to negotiate with them, they stated another version. They said, we have a friend that's going to fix it. Okay. So I left.

CHAIR STEFANICS: Okay, so we're not going to get involved in the fixing of the wall. We're here to hear your concerns about the property. So I heard about the wall and the space, so I got it.

MR. ROMERO: But like Mr. Merri said that he had never had an accident in 23 years, well that was an accident. That didn't just happen out of the clear blue, it was an accident, on my property.

COMMISSIONER VIGIL: Madam Chair.

CHAIR STEFANICS: Yes. We have three more people to speak.

COMMISSIONER VIGIL: I have a question of this particular -

CHAIR STEFANICS: Go ahead.

COMMISSIONER VIGIL: Mr. Romero.

CHAIR STEFANICS: She'd like to ask you a question.

COMMISSIONER VIGIL: I'm a very process oriented person and that's an issue that's being elevated for me. We heard testimony on part of the record that the Agua Fria Village Association did have a response to this case. Did any of your who are opposed to this attend that April meeting? Were you at the Agua Fria Village Association when apparently, to some extent, this case was discussed?

MR. ROMERO: At the Nancy Rodriguez?

COMMISSIONER VIGIL: Yes.

MR. ROMERO: I think at that time we were attending a funeral, so I really don't know. We didn't go to the meetings every month.

COMMISSIONER VIGIL: Yes, but that particular one, when there's been testimony that this case was discussed. You don't recall being there? Is that what you're saying?

MR. ROMERO: No, ma'am.

COMMISSIONER VIGIL: Okay. And your wife wasn't there also?

MS. ROMERO: No. We were at a family meeting, a family funeral. My sister-in-law's mother passed away.

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COMMISSIONER VIGIL: Thank you. I just needed –
MS. ROMERO: So we didn't – we had planned to make the meeting but then we helped prepare food and all the other things.

COMMISSIONER VIGIL: Most definitely understandably. Thank you very much for answering my question. Thank you, Madam Chair. And those who testify, I'd like to know how many attended any meeting at all if in fact this project was discussed with the Village Association.

CHAIR STEFANICS: I'll ask that in a minute. Yes, ma'am. Your name?

[Previously sworn, Raquel Romero testified as follows:]

RAQUEL ROMERO: My name is Raquel Romero and I live at 1330 Camino Sierra Vista. Georgia and Henry are my parents. So my interest is obviously my inheritance to their property. I'd just like to point out that I don't feel that my parents are trying to shut down the Anayas' business and the last person who spoke on their behalf, Patrick Romero states as the wall says, equal justice under law, it's unfortunate that he can't practice the law and it's unfortunate also that Mr. Larrañaga, that his business is – what's the word that they used? It wasn't the conflict. I'm sorry. I don't remember the word that he used. Something that his business is complaint-driven. And it's unfortunate that they have to make a complaint to make people comply with the law, and I just think if you're going to run a business, do it right. So for 23 years, if you're going to practice a business and you're not going to follow the law, what everybody else has to do then maybe you shouldn't be running a business. That's just my point. Thank you.

CHAIR STEFANICS: Thank you very much. We have two more speakers please.

[Previously sworn, Diane Roybal testified as follows:]

DIANE ROYBAL: Diane and Robert Roybal, 7124 Hartford Hills, Rio Rancho, New Mexico. We're the owners right across from the Anayas' property. There's a wooden fence that divides the property and I have a few problems in regard to the attorneys' comments. Number one, it's true that they've been operating illegally for 23 years. Back in 1989 the only reason we opposed it was we were raising two young boys and they started parking cars right up against our wind fence, [inaudible] window, and they were right up against my fence. And to me, that was a very – it was a safety issue, because it doesn't take the boys very long before they jump the fence, get curious and get in the cars.

You can do everything you can to try and keep them in your yard but it's bound to happen and it did happen. I'm not going to go into that, because we're not here for that right now, but it is also true that right now we are not living on that property but we are the property owners and we have rights. And it is true that we have about three families living there that have all complained about the noise from the towing trucks, the traffic, unfortunately, and again, we're not trying to keep them for being able to operate a business. We just want everyone to come to a mutual understanding, show respect to each other and comply.

We could have come back and we could have said, okay, you guys. You told them you were running an illegal business. You have 45 days to clear it up. They didn't do it so what are you going to do about it? We could have come back here. We didn't do that. Everybody deserves the right to be able to work and provide for their family. Our problem

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now here is that they're not doing that. They're not doing that and they have made it apparent – what they do, the work that they do is important. It's important to the community, but they're doing it in the wrong place. They don't have the kind of yard that they need, the space. And just like the fire chief said, there's a lot of things that we could be taking into consideration and all we want is for everyone to come to the table and find a place to have an understanding.

We did leave our property but for the first couple of years we've had family living there. It wasn't being rented out, and that's a matter of choice. We are the property owners and we need to be heard and that's why we're here. So thank you.

CHAIR STEFANICS: Thank you. Do you have anything, sir?

[Previously sworn, Robert Romero testified as follows:]

ROBERT ROMERO: I also want to say something. I'm not really opposing about this but like she said, he might have to change the zoning area for him to have that business there. And I've known the C de Vacas because I was born and raised in Agua Fria and I've known them for many years and the board asked me when we were last time why we didn't turn him in. Well, the C de Vacas are good people. They're humble people and I feel that they should say something if they really like it or not. The one of the [inaudible] said he doesn't want the roundabout. That's what we're concerned. We didn't want the roundabout to go through our property. Now he's talking about a hammerhead, and how could he afford a roundabout? How's he going to afford a hammerhead? So I couldn't see why that was brought up at the last meeting.

So that's what we were concerned, that that roundabout was going to run through our property, which is my sister's property, my sister wrote a letter, Elaine Cervantes, she's my sister, and she wrote a letter to the Board saying she's opposed to this but she don't know what it's about. But we know some others. When we first moved there, it was way before I got married, we – the C de Vacas, we were working at \$3 an hour and I know the Anayas started low, with only three trucks. And we felt for him. We couldn't turn him in. We were good neighbors and we wanted to keep it that way. But then this company came about and it's turned into more turmoil and everything because we're good neighbors and we wanted to keep it that way but it's up to you guys to see what is right, if it's right for him to have these trucks parking there or not, or if they're too big.

I guess he went too big on his business. He used to stay with the smaller trucks and now that he has the bigger trucks, or he has ten trucks. I don't understand where he's going to park them. So I thank you, Commissioners, that you guys are going to do your job and we have the right to speak out, and I thank them for what they have done all these years. They have done a good job. And that's all I've got to say.

CHAIR STEFANICS: Thank you so much for coming.

MS. ROMERO: One short comment. You mentioned a meeting of the association?

CHAIR STEFANICS: There were 36 Agua Fria Association meetings and I think Commissioner Vigil wants to know how many of you attended any of those meetings to talk about --

COMMISSIONER VIGIL: No, no. That wasn't the question. There was a meeting when this project was discussed specifically, in April or something. I just wanted to

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know whether there was equal representation. If there were people for and against?

MS. ROMERO: I don't think there really was, because we were never notified of that meeting. And we have been notified -- we're keeping up as much as possible. And the last meeting you had, we were here by chance.

CHAIR STEFANICS: Okay.

COMMISSIONER VIGIL: Thank you very much.

CHAIR STEFANICS: Commissioner, there was a woman in the back who attended a meeting. Do you want to hear from her or not?

COMMISSIONER VIGIL: I'm happy to, please. If you'd come forward.

CHAIR STEFANICS: I'm going to end -- come on up. I'm going to end the public hearing. I'm going to end the public hearing and now it's the Commissioner's turn and the Commissioner has asked the question and she believes, we believe this person can answer it. Then if the Commissioners want to ask questions of the staff or the applicants they will. Okay? I want to thank everybody in the audience for coming. Your comments are taken very seriously. So the public hearing is closed. We are now at the Commissioners' point for asking questions.

DONNA ROYBAL: I did not attend -- I'm Donna Roybal, but I did not attend the meeting. They did not tell people that they were having a meeting for that day. What they did is they called a community meeting, and it's usually a water association meeting, but they don't tell people ahead of time that they're going to have a community meeting at the center. They're going to have a meeting at the Nancy Rodriguez Center and they tell people ahead of time what the meeting is about. Usually, it's like a water board meeting, but they don't give us notification ahead of time when they're going to have meetings about such as what they discussed about their metal wall or anything like that. Okay?

CHAIR STEFANICS: Thank you very much for coming. Okay. So.

Commissioners, questions, comments? Commissioner Vigil.

COMMISSIONER VIGIL: I have a -- I represent this district. The people from Agua Fria are long-standing, traditional historic villagers. There's a lot about Agua Fria Village that needs to be protected including property rights and personal business rights and everything that was brought up in the issue tonight. I did put this vote with Agua Fria Village with regard to their planning process, and it was a very long and arduous planning process. I am concerned about whether or not this complies with that ordinance and plan that we adopted after that and I have a concern also about what our fire department is saying.

I have a recommendation though. And I think and hope that you all will agree to move forward on this because it requires an agreement. This involves neighbors. This involves family. There's lots and lots of history with family neighbors. I'm going to recommend that the parties go into facilitation on this issue. I don't think we're ready to make a decision tonight because frankly, there's enough evidence here where the Commission could decide in one favor and possibly in the other. I'm not sure, because that evidence would have to be fully weighed. But what would be far more likely a successful outcome would be if these neighbors, who want to be able to work things out, and I hope that. And those neighbors who want to continue in their businesses went through a facilitation session and I think maybe the way to follow up with that is to visit with staff.

We've actually had several cases that have gone to facilitation and I will tell you,

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when it comes to people in Agua Fria who are related and who have common interests, you have a better chance for success than many of the cases that we've sent to facilitation because you have a common bond. So my recommendation, Madam Chair, members of the Commission - and I heard that this case was discussed at the Agua Fria Village Association, and I do need to disclose that I heard from a proponent and an opponent, from one of each, and did not respond to them because it would be ex parte communication.

So regardless of any process you go to, the most important outcome is that you all sit down and talk around the table with a facilitator, bring out your issues, and perhaps there's ways it can be resolved. Perhaps there's even a way the issue of the fire department's concerns can be resolved. But this case is not ready in my mind to be approved or disapproved.

I would move that we table this case so that facilitation can actually occur between now and our next land use meeting. That would be fine. I'd be happy to see what the applicant has got to say, to see what this issue is, but I'm really sensing a very strong need for that to occur. And I wouldn't be surprised if you came out with a good resolution of this, at least I hope that would be the outcome would be. And that would be my recommendation, Madam Chair.

COMMISSIONER HOLLAN: Second.

CHAIR STEFANICS: Okay, there's a motion and second. Now,

Commissioner Anaya, I'll take your comments, but a tabling motions -

COMMISSIONER ANAYA: That's why I was going to do a comment before the second was made. And all I wanted to ask you -

CHAIR STEFANICS: [inaudible] a tabling motion.

COMMISSIONER ANAYA: I just wanted to ask you, Madam Chair, Commissioner Vigil, I absolutely concur that there is some work that needs to be done that I believe they can do. I'm not quite sure of the logistics of facilitation because this would be the first time I would experience it on the bench here, so I'd need more clarification on what that means from staff. But what I would ask you and Commissioner Hollan to consider is before we move on the tabling motion I do have some comments that might help the discussion and specific questions to staff that I would like to get answered that might help that dialogue along. But I think it is worthy to give an opportunity to see if there can be something more set up but I do tonight have some things I wanted to ask.

COMMISSIONER VIGIL: I'm perfectly willing to suspend the rules on a tabling motion and allowing all Commissioners to bring forth any issue that they think might help resolve or clarify based on the testimony.

CHAIR STEFANICS: Okay, and before I do that, Commissioner Vigil, I'm going to ask you to think about how you're going to phrase your motion because you're really doing a tabling motion with a condition and you might want a different motion. But think about that a minute. And the other issue is who would be facilitating? Because we have not in the past paid for professional facilitators here. So, Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. Thank you, Commissioner Vigil and Commissioner Hollan. I would just re-emphasize what I think that Commissioner Vigil's comments are in line with my thought process. But I did want to ask some specific question relative to the case, and then provide some comments on the record as

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one Commissioner from my perspective.

Just a comment before I ask some questions. The comment I would make is, as one individual Commissioner sitting on this bench, I would find it really difficult being quite candid with everybody in the room, to look at a business that's been in existence for 23 years, whether it's a donut shop, or anything. Construction business. Any kind of business. Understanding a lot of the sequence of events that have happened, I would have a really hard time going from that business existing to making a decision that would essentially cease the business period. I mean I'm just saying this honestly to all of you in this room and this case, that would go for anybody that would come before us. I just – I would just have a concern with that. That's why I say what Commissioner Vigil has suggested is something that I'm hopeful – like I said I don't know how the logistics would work but maybe that's even a staff mediated discussion that would help the discussion along. I don't know.

But let me just ask these questions. Mr. Bennett, I wanted to ask you a question, and if there needs to be clarification from the Anayas or anyone else I'm willing to hear that. But you say in your presentation that the towing company was purchased – the towing company started in 1981?

MR. BENNETT: No.

COMMISSIONER ANAYA: Hold on. In 1981 the Padillas – okay? – had a towing company from 1981 until it was purchased in 1989. Is that correct?

MR. BENNETT: My understanding is that as of 1981 the Padillas already had a towing company in existence and ran that towing company – I don't know how long before 1981, but ran it continuously through to 1989 when they transferred that very business that had been grandfathered in by the Agua Fria Village Association.

COMMISSIONER ANAYA: Right. But just be brief in your responses because I know there's other people that are going to ask questions. From 1981 to 1989 a towing company was operated by the Padillas in the Village of Agua Fria.

MR. BENNETT: Yes, sir. That's my –

COMMISSIONER ANAYA: Okay. So, okay. And then in 1981, 89 the towing company was purchased by the Anayas and has been operated in the same location from 1989 from to now.

MR. BENNETT: Yes, sir.

COMMISSIONER ANAYA: Okay. So, and this is for you, Mr. Larrañaga, that I think they wanted you doing some review of historical documents or issues pertaining to code enforcement and I asked it earlier but I'm going to ask it again for clarification. Are you aware of any other complaints, land use oriented or otherwise, okay, that came to the County prior to February of this last year?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya –

COMMISSIONER ANAYA: This year. I'm sorry. This current year we're in.

MR. LARRAÑAGA: On this particular site, no.

COMMISSIONER ANAYA: Okay. So towing companies, and I know my colleague to my left here is the expert on the PRC, but towing companies are regulated by the Public Regulation Commission. Correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, I don't know.

COMMISSIONER ANAYA: Madam Chair, Commissioner Mayfield, towing

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companies are regulated by the PRC? Correct.

CHAIR STEFANICS: Yes. There's documents in our book from the PRC records.

COMMISSIONER ANAYA: So just a couple more things. Just a couple more things and a couple comments. Relative to the land use case, and I think this is helpful information that we should see more of in our packet. I went back and read the packet again. I read the letter that came from the County again, from the Land Use Administrator, and what was to cease and desist at the time which - I'm not quite sure - I see that they wanted the commercial activity and what I heard in the testimony was the cars were removed and it just puzzles me that from that letter till now there was nothing else that the County provided or did to stop any operation. I mean, it seems like there would have been more information. I'm just asking you guys to go back and look at that actual document and the discussions and what was the backup information that we could have.

Regardless of what comes out of the outcome of the facilitation, mediation, whatever the heck we call it, I would like to see more of the detail behind that particular decision in 1980 or what was the date?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that was 1989 and I did try to find minutes, try to find something and couldn't find anything. This letter - there is a file.

COMMISSIONER ANAYA: Okay. I think those are all the comments I have for now. The comment - I made a comment at the beginning that said that I couldn't see myself from operating in a place for 23 years and then ceasing and desisting that business. By that same token, and I think this is where the comments of Commissioner Vigil have a lot of merit and a lot of standing with me is that I don't think that having a business is a carte blanche, the opportunity to do whatever the heck you want. I mean I think there are parameters. And I'm not implying that they've done whatever the heck they wanted but I think it's obvious that their business has grown over time and they have had to try and accommodate that growth over time, so that when you look at solutions, that I think we need to look at that closely. We need to analyze the space, we need to analyze the business itself, and trying to figure out what makes the most sense. But there are limitations associated with what you can do in a confined space. And I think we would be remiss if we didn't consider that there should be some limitations associated with the business.

So those are my thoughts. I look forward to seeing what comes of the discussions between the parties and I'm hopeful, as Commissioner Vigil stated that you all will be able to come up with some agreement that is mutual and that as neighbors and as family you could work through. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair, and thank you applicants and also the individuals who are opposed to this. I concur also; I think Commissioner Vigil brought up a great suggestion. This is one case that would definitely warrant some sort of mediation as far as the opposing parties, recognizing this area and all areas in Santa Fe County but in particular this area and some of the documents that were forwarded to me. It's mixed use. There's private residences in this area. There are numerous businesses in this area, but I do have a couple questions and I'm just going to shoot them out.

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I don't know who they're appropriate for, if they're appropriate for the applicant or for staff. But I am going to ask really quick that we go to Exhibit 3, the first Exhibit 3 from the applicant's packet. And there's a map, an aerial map that shows a lot of areas. Just so I have in my clarification. Ben Drive. Where on this map, County Road 62, and what is this adjacent road here to my right, to my left, straight up right here? What road is right in front of the circled 5?

MR. BENNETT: Circle #5?

COMMISSIONER MAYFIELD: Yes. What road is that?

MR. BENNETT: The road to the right of that --

COMMISSIONER MAYFIELD: The main paved road.

MR. BENNETT: The main paved road is Agua Fria.

COMMISSIONER MAYFIELD: That is Agua Fria. So then County Road 62 is down here in front of arguably 2 and -- in between 2 and 1. Okay, so the access to this property then is accessing Ben Lane right across arguably the street from 5, off of Agua Fria Road?

MR. BENNETT: No, it's just up further from 5 --

COMMISSIONER MAYFIELD: I'm sorry. Right in front of that. In between that red and white structure.

MR. BENNETT: That's correct.

COMMISSIONER MAYFIELD: And it goes to the right in between circle 7 and where it actually says Ben Lane?

MR. BENNETT: Yes, that's correct.

COMMISSIONER MAYFIELD: Okay and then we proceed down that road and now right in that middle area I'm seeing a bunch of vehicles.

MR. BENNETT: There are some vehicles --

COMMISSIONER MAYFIELD: What are those? Are those the towing vehicles? Are those the vehicles that we're talking about now?

MR. BENNETT: Those are personal vehicles. I think they belong to a neighbor.

COMMISSIONER MAYFIELD: Well, help me out, sir. This whole area right in between where those vehicles are at that has all the tire marks, that's arguably vacant property, who owns that property?

MR. BENNETT: Who owns this property?

MR. ANAYA: That belonged to Stella Sandoval. That's my wife's aunt.

COMMISSIONER MAYFIELD: Okay. So there's vehicles parked on Ms. Sandoval's lot?

MR. ANAYA: She's given us permission to park our trucks there. Those are our tow trucks.

COMMISSIONER MAYFIELD: Okay. But now your tow trucks are move to area 11.

MR. ANAYA: That's correct.

COMMISSIONER MAYFIELD: So is there a fence or is that still an open piece of property?

MR. ANAYA: It's been developed now. It's fenced off.

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COMMISSIONER MAYFIELD: Okay. So now let's go from 11 over to 6. I see there's a little entrance in that area that comes over to Entrada Fabian.

MR. ANAYA: Yes.

COMMISSIONER MAYFIELD: So is that a turnaround or is that some way that you can get your vehicles out?

MR. ANAYA: That's actually -- between the property line there is an opening that we had created to cross over to visit the sister-in-law.

COMMISSIONER MAYFIELD: But that's not for your business vehicle access?

MR. ANAYA: No, sir.

COMMISSIONER MAYFIELD: Okay. So you kind of just turn around your vehicles on area 11 and then run them back out Ben Lane.

MR. ANAYA: That's correct.

COMMISSIONER MAYFIELD: Okay. Thanks. That really helps me out a lot. So now a question for again the applicants, but that fence that was knocked down on the Romeros' property, I guess to my far right. I'm assuming that's that white wall that was right there in between the green.

MR. BENNETT: Yes, that is -- you're looking at still at that same --

COMMISSIONER MAYFIELD: I'm looking at circle 11 on the same page.

MR. BENNETT: Yes, it's just at the top edge of the circle, on the right side of the circle. See that white line that comes down to the right going from top to bottom downward to the right.

COMMISSIONER MAYFIELD: So the wall -- I'm trying to question the wall.

MR. BENNETT: It's that white line.

COMMISSIONER MAYFIELD: The wall was built on the property line? Do we know?

MR. BENNETT: Yes.

MS. ROMERO: Actually, when we first put up a fence to separate our property, it's six inches in from the original survey, and then when we built the wall that's another six inches. So we're 12 inches in from what is actually our land boundary. But he has totally destroyed the fence and already knocked down the wall.

COMMISSIONER MAYFIELD: And that wasn't my question. I know typically, everybody does it. I may be guilty of it but I'll say this. But on an adjoining property by law you should arguably have that five-foot buffer on the size. So that means if you guys go to mediation that could arguably be a topic of discussion of at least bringing those vehicles five feet from that wall. Yes, sir.

MR. ANAYA: After the wall incident with the accident itself what we did is we brought the footings in about eight feet and we put railroad ties. So when the back of the trucks back up, when the wheel hits the railroad tie that gives whatever the distance from the wall, so that this incident will not occur again. We do have railroad ties that have been stamped into the ground to give us that boundary so that we back up to the railroad ties, that's the distance that we're given for the wall.

MS. ROMERO: Excuse me, that is incorrect.

CHAIR STEFANICS: If the Commissioner wants to ask you something he

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will. So thank you very much.

COMMISSIONER MAYFIELD: Just so I can understand this, depending on where this case goes, but thank you. So honestly, I think you guys have clarified a lot of this for me except – I'm going to ask this again. That center area that I believe you said Ms. Sandoval owns that property, there are no vehicles that you tow parked on that property, right?

MR. ANAYA: [inaudible]

COMMISSIONER MAYFIELD: Thank you, Mr. Anaya. And I guess my question is, based on some of my past experience in my past capacity, I was looking through your warrant application. The warrants do say, from the PRC, that this is for Ben Lane. I know the provisions within the Public Regulations Commission as far as having to keep an impound yard that people have access to, and I saw that in one of your packets in the back. I think it was 32 or something. Was that your impound lot?

MR. ANAYA: No, sir.

COMMISSIONER MAYFIELD: Who's impound lot is that one? It says Anaya's Towing on it. It's your guys' packet. And I may be wrong on the number; there's a lot of subtitles on here.

MR. BENNETT: Are you talking – yes, subtab 32 –

COMMISSIONER MAYFIELD: On subtab 32 it says Anaya's Roadrunner Wrecker Service. And it says it says it's storage lot 2876 Industrial Road.

MR. BENNETT: May I approach?

COMMISSIONER MAYFIELD: Sure. This one right here.

MR. BENNETT: That's Bob's Towing.

COMMISSIONER MAYFIELD: So that's not – it says Anaya's Roadrunner on the right side.

MR. BENNETT: Where is it?

COMMISSIONER MAYFIELD: So let me ask this question then. That shows an impound lot. And if you guys look at the title on this page it says Anaya's Roadrunner Wrecker, Bob's Towing, storage lot 2876 Industrial Road.

MR. ANAYA: That is correct. That's where we have our towing facility, the storage yard.

COMMISSIONER MAYFIELD: Are you sharing this facility with another towing company?

MR. ANAYA: No, we own both companies.

COMMISSIONER MAYFIELD: Okay. You own – okay, that's great. And then I'm going to go back to some minutes that were given to me in staff's packet, and I'm going to ask this question. And I am on page – let's see what page I'm on. I'm on staff's summary page and it is the second page, and it says the applicant states – so this is staff saying what the applicant stated. Oh, no. I apologize. [inaudible] I am on page 3 and the exhibit number is NBI-6. Okay, here we are. So I'm going through the second paragraph. I'm not going to read the whole paragraph but I am going to say, The Anayas utilize an impound lot away from their property to provide temporary storage for all vehicles that have been towed. However, the impound lot is vulnerable to weekly vandalism and is not an appropriate site to park the Anaya's tow vehicles.

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I'm going to say again, I'm not with the Commission but it causes me concern because you also have to have a secured facility for all impounded cars to be at. And that's why I would believe that your vehicles could also be hopefully safe at an impound lot that you have that is away from your main residence. So I'm just going to throw that out there.

And I guess my other question is in hearing the testimony that was provided on both sides, is that I've been told there are no impounded vehicles at the lot on Ben Lane but I've also been told or heard that there are occasionally impounded vehicles on Ben Lane.

MR. ANAYA: No, sir, those are my race vehicles, recreational vehicles.

COMMISSIONER MAYFIELD: I'm sorry, sir.

MR. ANAYA: They're my racing vehicles. They're recreational vehicles that we use such as my camper, my boat, my racing truck that we do in the mud. You know, various vehicles that we take out and play around when we have free time.

COMMISSIONER MAYFIELD: Again, just for the record, there are no impounded vehicles or no vehicles that you're picking up on a DWI seizure or anything that would be stored at Ben Lane.

MR. ANAYA: No, sir. All the vehicles that are picked up by the seizure contract go to the police or State Police and are held in their facilities. All we utilize that is pick up and transport are those vehicles to the law enforcement wherever they want to seize them at. Our facility on Industrial Road is not adequate enough to park all my tow trucks in there. That's the reason why we don't put them there. Are entry ways that the property has is too small. It's big enough for a small truck to get in there. And basically, that's where we store accidents and stuff that we pick up for the insurance people.

COMMISSIONER MAYFIELD: So say you have Class D wrecker license.

MR. ANAYA: Yes, sir, we do.

COMMISSIONER MAYFIELD: So if you towed a fire truck – you could tow a fire truck with a Class D, where would you store that vehicle at?

MR. ANAYA: We don't store them. Vehicles of that magnitude and size get delivered to the fire department or the – where they do the repairs at Station 5 on Siler Road, or if they're badly wrecked or whatever then we would be delivering them to Albuquerque to a facility that does work on that type of equipment. But here in Santa Fe we don't store anything of that magnitude in our yard. It's not big enough.

COMMISSIONER MAYFIELD: Okay. Thank you. And then this question will be for staff and it will just be a follow-up. Mr. Larrañaga, so in the code as it exists today – and I do appreciate what the Anayas just told me, if they are keeping towed vehicles off at a secured site, but I believe that the question here is keeping their primary business vehicles at this site. I guess my thoughts though on this is that they came in for the application from the County, they came in for a business license, but arguably they have almost like a split-use business license, because of what I heard, they're doing the bookkeeping, they're keeping their primary access vehicles for towing at this site, but everything else that they're impounding and taking to a different location.

So in our current code, if somebody's running a business or doing a business and understanding that people sometimes work 24 hours a day, what are the rules as far as if you have to have a vehicle to get to point A for work that you cannot keep that vehicle on your private residence? Because I don't honestly view it almost as a commercial business being

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run out of the Anayas on Ben Lane if they have that adjacent lot.

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, the Agua Fria Ordinance is the one that governs this and they have a home occupation and they have a home business. When the applicants first came in we discussed the possibilities of doing a home occupation or home business where they could have one tow vehicle on the property and still have their office and everything else at their house, which we've done in the past and allowed a tow vehicle just as long as it's screened and the signage and everything else is not visible from the neighbors. When I looked at the plat, the way the lot is configured, it's one big lot. So they still wanted to store their tow vehicles, the tow trucks on the back – everybody's calling it a lot but it's one lot. It's just shaped oddly. It was probably – I didn't process the family transfer but that was probably done so they could meet the density requirements to allow the family transfer or land division back then.

So it's one complete lot. So they couldn't qualify, showing it as a legal lot, they couldn't qualify as a home occupation by having on one part of the property, having seven, six, whatever tow trucks and then one tow truck parked on the part of the lot where the house is on where they could run their books and so on.

And the variance that's being requested is a variance of the Agua Fria Ordinance. The use list, looking at the use list and analyzing that and discussing that with other staff members and my supervisor we've – it didn't qualify under that use list. So to qualify under that use list as a special use, which a special use would need a master plan, eventually a master plan and development plan to rezone that property as a commercial use for that particular type of use, their best way was to ask for a variance. It's not a variance of the Land Development Code, it's a variance of the Agua Fria Ordinance to allow it to be recognized as a special use under the category that's stated in your packet so that they could still come forward for a master plan, preliminary and final development plan.

As I mentioned in my staff report we haven't analyzed it but a conceptual review it is a small lot, that many tow trucks, that's where they have to meet Fire Marshal requirements, they have to meet other requirements to access onto Agua Fria at the master plan process.

COMMISSIONER MAYFIELD: Okay. Thanks. Madam Chair, that's all I have.

CHAIR STEFANICS: Thank you. Commissioner Holian, and then we'll go back to your final – no issues? Okay. Commissioner Vigil.

COMMISSIONER VIGIL: Was the variance requested for the fire denial?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no. The variance is strictly on the fact that they do not qualify as a special use under that category for the type of business that they're operating and the use that they are using the property for. The Fire was brought into review for the use that they're using right now and that's why they reviewed it.

COMMISSIONER VIGIL: And under the current recommendation they really should consider, if all circumstances stay the same I'm hoping they can work something out with the fire department but if all circumstances stay the same wouldn't they need to request to variance once the fire department is denying if the regs are not met from their review of the case?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, at the time of master plan they might not meet the requirements stated by Fire, as a commercial

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development. I believe, and Buster can answer this, but right now he's looking at it as a commercial/residential property that's running this type of business. As a master plan it would turn into a commercial property for this type of use.

COMMISSIONER VIGIL: Okay. I think that issue might need to be really insightfully discussed in the motion I'm going to make on the facilitation. With that, Madam Chair, if I may, I move that we temporarily table pending staff arranging for a mediation with a professional mediator between the applicant and persons opposing the application. The mediation should be completed prior to next month's land use agenda, at which time staff can report on the results of the mediation. If in fact more time is required for mediation that report can be given at the next land use. That is my motion.

COMMISSIONER HOLIAN: And I'll second.

CHAIR STEFANICS: Okay. Thank you. We are on the vote. It's to temporarily table with a condition, which is allowed, and the intent is to bring this back in a month. Mr. Bennett, you had a short comment or question?

MR. BENNETT: I have a question. Before a decision is made to mediate this I have some questions about such a mediation. Number one, is there going to be input into who is the mediator? Number two, is Mr. Larranaga going to be involved with the mediation? And number 3, who are the parties to the mediation? I know the Anayas are; they're the applicants, but is it just the Romeros? What are the limitations?

I know the likelihood of success will rise with the fewer amount of people that are involved so I'd like some clarification on that.

CHAIR STEFANICS: Commissioner Vigil, would you like to address that?

COMMISSIONER VIGIL: What I have anticipated is that the applicants and the opponents to the application be initially the principal parties of that. They will need to meet with staff. I'm not sure if they're fully familiar with what mediation is or is not. But I think there will have to be an orientation to that. I think they can talk about a consensus with the mediator. It is anticipated that a mediator who has some background in land use would be significantly helpful in this process, but when you mediate you actually are able to identify your own process, and I think the mediator can start by identifying between these two parties what the process will be and who will be involved.

And I think they become a part of that decision process. But usually it's the applicant -- so that would be the Anayas, and the Romeros. Okay?

CHAIR STEFANICS: Let me add, the County has the ability to utilize State Risk Management Alternative Dispute Resolution Bureau, and they have a list of free mediators and paid mediators that can be drawn upon and have no relationship with the County or probably with you, Mr. Bennett. So there are some venues to selecting somebody totally objective for both parties.

MR. BENNETT: And who would bear the cost of a paid mediator?

COMMISSIONER VIGIL: I think when the County orders it the County is responsible.

MR. BENNETT: Thank you.

CHAIR STEFANICS: So I think we're ready for a vote.

COMMISSIONER ANAYA: Madam Chair, just one comment if I could.

CHAIR STEFANICS: Is it a question or a comment?

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COMMISSIONER ANAYA: Just a comment. What's being proposed and being voted on is an opportunity to find some middle ground – bottom line. And all of you should take it as that. Thank you.

CHAIR STEFANICS: Thank you. All those in favor of the motion to temporarily table with the condition for mediation between both parties prior to the next land use case, which is a month from now please say aye.

The motion to table passed by unanimous [5-0] voice vote.

CHAIR STEFANICS: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, just a note that this is still an adjudicated case and we're all bound by ex parte communication. Just so everybody is still aware of that.

CHAIR STEFANICS: That's correct.

MR. BENNETT: One other thing.

CHAIR STEFANICS: Mr. Bennett.

MR. BENNETT: With respect to that schedule, it's very difficult for me. I have out of state litigation that I'm involved with for the next month fairly heavily, and I just don't know if it's logistically possible for me to do it in a month.


COMMISSIONER VIGIL: That's a discussion you need to have with your client, I think. And the motion itself does say if the parties are not ready to come forth at the next land use they have the option of reporting that and extending it, but I don't know that we can make a decision about your availability. Thank you.

CHAIR STEFANICS: Thank you. So Commissioners, I would ask that you keep the section from the BCC book, and the entire binder that was given to you tonight, so that staff do not waste another tree. So we would have all of our materials if you keep the section from the staff BCC book and from the -- and the entire book that was presented to us.

XVI. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chairwoman Stefanics declared this meeting adjourned at 8:55 p.m.

Approved by:


Board of County Commissioners
Liz Stefanics, Chairwoman

ATTEST TO:

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NBB-46

Staff recommendation is approval of a transfer of ownership of Liquor License No. 2792 which is currently located at 37 Fire Place. Madam Chair, I stand for any questions.

CHAIR STEFANICS: Thank you. And before we go to any questions for you from the Commission, I'd like to clarify for the record that we also discussed real property acquisition in our executive committee, so that the minutes would reflect that as well. Thank you.

COMMISSIONER MAYFIELD: Thank you, Madam Chair.

CHAIR STEFANICS: I do have a question. I realize that this is replacing something, but is this the Santa Fe Brewery or is this the restaurant?

MR. LARRAÑAGA: Madam Chair, this is the restaurant.

CHAIR STEFANICS: Okay. Thank you. Are there other questions or comments from Commissioners for staff? Okay, is the applicant here? Do you have anything you'd like to say?

[From the audience the applicant declined to add anything.]

CHAIR STEFANICS: Okay. Thank you for being here tonight. Okay, this is a public hearing. Is there anybody in the audience that would like to speak for or against this request? Anybody at all? Okay, seeing no one, the public hearing is now closed. We are on discussion or action on this case.

COMMISSIONER MAYFIELD: Move for approval, Madam Chair.

COMMISSIONER ANAYA: Second.

CHAIR STEFANICS: There is a motion and a second to approve BCC Case MIS #12-5370, Cordelia O. Roybal enterprises, LLC, liquor license.

The motion passed by unanimous [4-0] voice vote. [Commissioner Holian was not present for this action.]

XVII. A. 2.

CIDRC CASE # V 12-5200 Robert and Bernadette Anaya
Variance. Robert and Bernadette Anaya, Applicant's, Talia Kosh
(the Bennett Firm), Agent, Request a Variance of Ordinance No.
2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village
of Agua Fria Zoning District Use Table), to Allow a Towing
Business as a Special Use Under the Zoning Use Table on 0.70
Acres. The Property is Located at 2253 Ben Lane, within the
Traditional Community of Agua Fria, within Section 31,
Township 17 North, Range 9 East, (Commission District 2 [Exhibit
3: Supplemental Material, Exhibit 4: Anaya Exhibits]

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MR. LARRAÑAGA: On June 21, 2012, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants' request for a variance.

On August 14, 2012, the Board of County Commissioners met and acted on this case. The decision of the BCC was to table the request for a variance pending mediation between the Applicant and persons opposing the application. Rosemary Romero was contracted by Santa Fe County to be the mediator as directed by the BCC. Ms. Romero's recommendation states: "Mediation is a process that often helps bring parties together to resolve issues in a neutral setting with 3rd party support. In this particular case, several factors indicated that this case would not be appropriate for mediation. In particular, the inability to talk directly with the parties requesting the variance proved challenging to the process; getting contact information for family members and getting calls returned from family members who did not want to be involved was difficult and the issues noted above indicated that full participation from all affected parties in a mediated process would not be possible. The lack of participation from opponents to the variance is not an indicator of interest, but of 'just not wanting to be involved' in either a mediation process or the county land use process and the potential for making things worse rather than better." The Mediator Report to the BCC is attached as Exhibit 11.

Staff has included additional information that may help to clarify some of the confusion at the August 14th hearing with respect to the testimony given by the Applicants and their Agent and the documents which were submitted by the Applicants. Attached as Exhibit 12, in your packet material are plats of the property that illustrate the change in the lot lines relative to the placement of the tow trucks on the site; dated aerials of the site which illustrate the expansion of the business, the addition of larger tow trucks and where the tow trucks have been relocated on the site; photos of the Anaya property and a response to the list of businesses provided by the Applicant. The Applicant also submitted a letter from William Mee which was presented to the BCC in support of the Application by the Agua Fria Village Association. Enclosed as Exhibit 14 is a letter of clarification from Mr. Mee. In this letter, dated August 31, 2012, Mr. Mee states: "The letter that was submitted from myself on behalf of the Agua Fria Village Association in regards to CDRC Case #V 12-5200, the Robert and Bernadette Anaya Variance, may have been misinterpreted as support for the Anaya variance or led to the conclusion that the Association had taken formal action on the case." Also, attached as Exhibit 13 is the criteria set forth in the Land Development Code which describes non-conforming use as a use of a structure or property.

Madam Chair, would you like anybody to go through those exhibits right now or do you want to save it for questions?

CHAIR STEFANICS: Let's do the exhibits right now.

MR. LARRAÑAGA: Okay. So if you could turn to Exhibit 12, where it has the plats. Exhibit 9-A as the original plat that shows Tract 4, which was .332 acres, which is the original Anaya property.

CHAIR STEFANICS: So, Mr. Larrañaga, are you entering new information into this case?

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MR. LARRAÑAGA: Madam Chair, no. Most of these exhibits were brought out of the exhibits the applicant submitted. I was just clarifying how the lot started, how it expanded when there was a lot-line adjustment, how it created the lot as it is right now, and where the tow trucks started through aerials, actually that the applicant submitted, through the years, how they expanded in the tow trucks and where they've been placed on the property, on their property and on adjoining properties, and then there's just one aerial stating -- really emphasizing in color what the actual lot, their lot, what it looks like and where the tow trucks were stated. That would be 2-D. Most of these aerials were already presented to you either by them or by staff in the prior hearing. We're just emphasizing to try to clarify the lot configuration and where the tow trucks were parked initially and where they are now, what brought this to our attention with the complaint.

CHAIR STEFANICS: Okay, so let's leave it then to questions to identify items that you might have to direct us to in the appendices or the attachments. Okay?

MR. LARRAÑAGA: Yes.

CHAIR STEFANICS: So are you ready for questions?

MR. LARRAÑAGA: Madam Chair, the rest of the report is pretty much as the original report. I'm ready for questions.

CHAIR STEFANICS: Okay. Thank you very much. Okay, to recap, you're still recommending denial. The mediation really could not occur, from your notes, due to the lack of presence of some of the parties.

MR. LARRAÑAGA: Madam Chair, that's correct. The letter from the mediator is in your packet materials.

CHAIR STEFANICS: Okay. Questions, comments from the Commission for staff? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair, so help me again with your statement as far as the mediation. So there was active party involvement in the mediation?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, actually I believe Rosemary Romero, the one that we got as a mediator is here in the audience. Maybe she could answer that question.

COMMISSIONER MAYFIELD: Okay. [Inaudible], Madam Chair.

CHAIR STEFANICS: Okay, so before we go to Ms. Romero, are there other questions for staff, and then I'm going to ask our attorney about process. Well, let me just ask the process question first. Mr. Ross, we held a full public hearing on this earlier.

MR. ROSS: Correct.

CHAIR STEFANICS: And Commissioner Vigil, I believe it was, requested mediation. So we are not bound to a full public hearing at this time, just to questions and clarification?

MR. ROSS: Madam Chair, that's correct.

CHAIR STEFANICS: Okay. Thank you. So, since that is the case, I will put Commissioner Holian and Commissioner Vigil on the list but Ms. Romero will you come up to answer Commissioner Mayfield's questions? And thank you for being with us this evening. Did you catch his questions?

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ROSEMARY ROMERO: Good evening, Madam Chair and Commissioners.

[Duly sworn, Rosemary Romero testified as follows:]

MS. ROMERO: For the record, my name is Rosemary Romero, Rosemary Romero Consulting. I am a mediator/facilitator for the City of Santa Fe and internationally as well and have 22 years experience doing mediation. So, Commissioner, to answer your question, I did watch the BCC meeting where this was sent to mediation, and the process was a voluntary process so I'm hoping that I'm going to answer the question that you asked, which was it proved rather difficult to get full participation in the process because it was voluntary. I don't think people really got it that it was – and it was nowhere stated that they would participate in mediation. I talked to every participant, every potential participant. Some said this sounds like a great idea; move forward with that, with the assumption we were going to move toward mediation, started to figure out what some of the issues were that would be addressed, but as we got closer to mediation, to the date that we had put forward, people really started to back away and even in the assessment part of the mediation, just trying to hear from people, trying to understand what the issues were, people just – they kept pushing back. This is going to cause more problems for our family than it should. There's a legal process that should be followed.

I noted I think all of them in here but to give you more of the detail people just didn't want to participate in mediation that wasn't mandatory; it was voluntary, and when push came to shove, they really didn't want to participate. I probably could have gotten three people, but in effect that wouldn't have solved the issues that were at hand. I needed full participation just given where people lived and the impact on the surrounding neighbors. I think it would have been best to have full participation and that wasn't guaranteed at all. It was not even possible.

COMMISSIONER MAYFIELD: Madam Chair, Ms. Romero, thank you for that. But how about the mediation between the two main parties, the Anayas and I believe, and I'll look at it, but the Romeros?

MS. ROMERO: Madam Chair, Commissioner Mayfield, I believe initially that the parties as noted were – the disputants were the Romeros, but in working with staff to figure out who should be involved in the mediation it was clear that there were other people beyond the Romeros that were relatives within the areas where the site was or is that should have been part of the mediation because it really was affecting everybody, and many of those were family members. So in reviewing the BCC meeting minutes of that evening where Commissioner Vigil asked for mediation, it really was broader than just the two disputants. The disputants asked Land Use staff to make it be broader than that because of the impacts to those in that area and then the Romeros who are not in that compound but were affected and will be affected by a decision made by the BCC.

So it went beyond the family members to those that were affected. I did talk to the people in the surrounding area also to see if they could be part of it, because whatever decision does get made it does affect people who are beyond that compound.

COMMISSIONER MAYFIELD: So Madam Chair, Ms. Romero, did you meet either with the Anayas or the Romeros?

MS. ROMERO: I met with the Romeros, who found the time to meet with me.

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Everybody else would either -- did not meet or -- I did talk to them. For the Anayas, I was unable to meet with them directly. I was given direction to speak to their attorney only. So for them, I understood what the issues were, having read the packet that was given to me by staff. What I was looking for was issues that could be mediated with those that were going to be affected by the decision.

COMMISSIONER MAYFIELD: Okay. Thank you. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you, Commissioner Vigil.

COMMISSIONER VIGIL: And thank you, Ms. Romero for your efforts in this. I guess my question may go to Steve. Because I know we're looking at mediation as an alternative under Sustainable Growth, because we request mediation be done by the parties can we go to a mandatory request? It doesn't seem to me that we have a rule or regulation that allows us to do that, and I think if we define a process that includes it that would give us permission at minimum to do that.

MR. ROSS: Madam Chair, Commissioner Vigil, we weren't planning on requiring mediation except in those cases that were selected for mediation, in which case it would be required. So it wouldn't be required of all cases. You're probably not even asking that. You're probably asking whether it can be made mandatory. That's how they do it in Albuquerque and we were planning on proposing that model.

COMMISSIONER VIGIL: Okay. But we don't have currently anything that directs them to do it.

MR. ROSS: Not in the current code, there's nothing on this topic at all.

COMMISSIONER VIGIL: Okay. I just think it's unfortunate that the parties did not choose to mediate. Mediation is an alternative dispute resolution particularly created for neighbors and neighbors are the ones that have to live with the consequences which really the best alternative for both the neighbors to understand each other's position and to try to come to a compromise for those positions. That is what my motion hoped for. I don't think you can mediate with attorneys. If you were put in a position where you couldn't mediate unless you spoke to attorneys, that's not a mediation. Attorneys are trained advocates in an adversarial setting. They are not representing their clients in mediation unless their clients give them a directive to compromise. But apparently that wasn't given at all. So I can see the difficulty in trying to mediate this case. I think that's very unfortunate because that really puts this Commission in a position of having to make a choice that's either up or down, that people are either going to happy or unhappy with, whereas mediation would have brought a better outcome. I'm very disappointed. Thank you.

CHAIR STEFANICS: Thank you, Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I have a question from you, Jose, and I think this is on Exhibit 12 which I think was in our packet, which I think was new material as compared with the packet that we had last time. Is that correct? Exhibit 12, with the aerial views?

MR. LARRAÑAGA: Actually, Madam Chair, Commissioner Holian, it's revised material. It's the same material that was in your packet, actually, like I mentioned. It's material that was brought by the applicant originally. I just used it to show the history and so on.

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COMMISSIONER HOLLAN: So I just wanted to clarify something. Because in 2008 it looks like there were no tow trucks on the property in question, and then in 2011 there were tow trucks on the property. So when did they start parking tow trucks on that property? I'm looking at aerial 2-G in Exhibit 2 in our packet, not this big fat one but the one that we had at home.

MR. LARRAÑAGA: Yes, Madam Chair, Commissioner Holian. The clearest aerial is Exhibit 2-C under that same Exhibit 12. You'll see some tow trucks and you'll see Ben Lane on Tract 1, that's labeled Tract 1, so that's the clearest one that has tow trucks on it. And you are correct in stating that out on the outlined property in 2-E the tow trucks weren't on their property; they were on somebody else's property, right across from their home. I think this was created because part of the questions brought up was since they've had tow trucks there for years, what brought them to our attention was because it went to the back of their property, where they were originally parking the tow trucks. Now there's mobile homes there. The people that own the property, relatives of the Anayas have put mobile homes in there and so on so they moved the tow trucks back on their property on the back side and the Romeros live to the north of them on that wall that separates where they live and that's what brought in the complaint.

COMMISSIONER HOLLAN: So do you know what year they started parking the tow trucks?

MR. LARRAÑAGA: Madam Chair, I believe it was in the nineties, early nineties, according to –

COMMISSIONER HOLLAN: Well, it looks here like in 2008 there were no tow trucks on the lot in question.

MR. LARRAÑAGA: Yes, that's correct. On the lot in question, somewhere between 2008 and 2011 they started. I don't know exactly what year.

COMMISSIONER HOLLAN: And then I gather that the route that the tow trucks take in going to where they park is along where this yellow line is. Is that Ben Lane?

MR. LARRAÑAGA: That's exhibit –

COMMISSIONER HOLLAN: I'm looking at Exhibit 2-G, but it doesn't have Ben Lane marked on here.

MR. LARRAÑAGA: Madam Chair, on 2-G, that's correct. That's Ben Lane.

COMMISSIONER HOLLAN: But there's a yellow line that goes from Agua Fria to where the – and that's where they go in and out of that parking lot, correct?

MR. LARRAÑAGA: Correct.

COMMISSIONER HOLLAN: And is that an easement for the trucks? I mean, is that an official easement for vehicles to go up and down that lane?

MR. LARRAÑAGA: Madam Chair, Commissioner Holian, that's an easement for the property owners to go. It's a private easement for all the property owners to go through to get to their properties, Ben Lane is. This is a whole family tract which brothers and sisters live on and that was an easement that was created for everybody to use to get to their properties.

COMMISSIONER HOLLAN: Okay. Thank you, Jose. And then I have a question for Captain Patty. Captain, could you repeat what your findings were with regard to

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access for the fire department in the case of an emergency to this place where the two trucks are parked?

BUSTER PATTY (Fire Department): Madam Chair, Commissioner Holian, Ben Lane is wide enough, the whole general road is wide enough, which meets the minimum fire code of 20-foot wide. The entrance off of Agua Fria doesn't have any radiuses. It has a telephone pole and a wall that would have to be increased a little bit. We did meet with the applicants and their attorneys last week and explained that. And at the end of the road on that piece of property they would have to create a hammerhead. It doesn't have to be a cul-de-sac but there has to be a place to put a hammerhead to turn around for a commercial operation.

COMMISSIONER HOLIAN: So that would be possible to actually make those modifications?

CAPTAIN PATTY: It is possible if they choose to.

COMMISSIONER HOLIAN: Okay. Thank you, Captain.

CHAIR STEFANICS: Thank you. Any other questions for staff.

COMMISSIONER VIGIL: I -

CHAIR STEFANICS: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Larrañaga, and I was trying to dig through all of these. I didn't have these notebooks priorly. There has been increased use of this property. This is the first time it's come to our attention. Is that correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, that's correct.

COMMISSIONER VIGIL: Do you have any history of that increase of use and what it was for?

MR. LARRAÑAGA: Madam Chair, no. This came in as a complaint. If you go down Agua Fria you can't really see what's back there so I guess in our defense as far as code enforcement and watching over Agua Fria unless it came in as a complaint we wouldn't know.

COMMISSIONER VIGIL: So it's fair to say the increased use just never got complained about, prior to this case.

MR. LARRAÑAGA: Madam Chair, that's correct, until they moved the tow trucks back to the back of the property. Yes.

COMMISSIONER VIGIL: Okay. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Other Commissioners. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, for the record, how many years has this business been in operation, Mr. Larrañaga?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, I have no idea. The area show it since the early nineties that there were tow trucks in there. The business has never been registered with Santa Fe County. That's what they got cited for was running a business without a business license.

COMMISSIONER ANAYA: If the Anayas could come forward and just answer that question for me. How many years have you been operating in that area.

[Duly sworn, Bernadette J. Anaya testified as follows:]

BERNADETTE ANAYA: Bernadette J. Anaya. We have been in business

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[Duly sworn, Robert M. Anaya testified as follows:]

ROBERT M. ANAYA: Robert M. Anaya. We did and we were all for it. The problem was the mediator and the Romeros didn't want to meet with us because we had an attorney.

COMMISSIONER VIGIL: Okay. You would mediate with your attorney present, yet the mediator's requirements are that there is no attorney present for mediation.

MR. ANAYA: We weren't told that. We were willing and ready to meet. It never happened. It never happened.

COMMISSIONER VIGIL: That's not what was represented tonight.

MS. KOSH: May I read an email to you?

MR. ANAYA: I need you to hear the email because it was given to her telling us what was going on.

MS. KOSH: It just shows our willingness. If I just may read this because –

COMMISSIONER VIGIL: I will have to have the mediator respond to that. So I didn't want this to be a he said-she said, Madam Chair. I think we have information here. The mediation and the willingness to mediate, I just wanted Mr. Anaya's response, Madam Chair. That's all I need.

CHAIR STEFANICS: Okay. Thank you. I have a question for Mr. Larrañaga please. Mr. Larrañaga, does the business have a second property? Where it stores vehicles?

MR. LARRAÑAGA: Madam Chair, yes. The business has one on Industrial Road, within the city limits.

CHAIR STEFANICS: Okay. Thank you very much. That's all I need to hear. There is a motion – Yes, Mr. Larrañaga.

MR. LARRAÑAGA: If I may, Madam Chair, just to clarify, the variance is to allow them to be recognized as a special use under the Agua Fria ordinance. If they get approved of this variance they still will have to come in for a master plan, preliminary and final development plan under that ordinance and under the County code. So at master plan they would have to meet the requirements of master planning, zoning – traffic impact analysis, water budget, the things that Mr. Patty talking about, at master plan.

CHAIR STEFANICS: So Mr. Larrañaga, based upon what you're telling us and what is there now, could the existing layout of the business on the property possibly pass code requirements?

MR. LARRAÑAGA: Madam Chair, without reviewing all of it, it possibly can. The access, as Mr. Patty stated, that's somebody else's property. I don't know if they'll meet the requirements of the radiuses. Again, in my report I state that the staff has conceptually reviewed the site for zoning requirements for a special use and it was determined that other variances may be required. So we won't know that until the submit for the master plan process, and see if they meet all the requirements.

CHAIR STEFANICS: Thank you. Mr. Ross, I have a question for you. If this preliminary request was granted, is the County setting an expectation that following applications will be approved?

MR. ROSS: Madam Chair, you mean following applications by this applicant?
CHAIR STEFANICS: Yes.

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MR. ROSS: It's setting the stage for -- well, it's eliminating a -- it's allowing them to start the process, the way I understand it. So they can start the process. It doesn't set any necessary precedent for future steps, no. But they can't even start the process without a variance under the ordinance.

CHAIR STEFANICS: Okay. Anybody else that would like to speak or ask questions before we -- Yes, Commissioner Vigil.

COMMISSIONER VIGIL: So actually, this is just the beginning of a variance. They probably would need to come to us for further variances, correct?

MR. ROSS: Madam Chair, Commissioner Vigil, I don't believe they need further variances, but they need a variance in order to be able to start through the rest of the steps.

COMMISSIONER VIGIL: So if they increase their use and their density and they actually get what they're requesting tonight, and they want to change something, that is going to require a variance?

MR. ROSS: Madam Chair, Commissioner Vigil, perhaps Penny or Vicki can jump in.

COMMISSIONER VIGIL: I think probably the answer was stated by Mr. Larrañaga, but it's going to be difficult to assess that without knowing what the requests are. But the fact is that a variance may set a precedent for further variances if a variance has been granted for a particular property to move forward in this direction. I'm making a statement, Penny, I'm not asking for your comments.

CHAIR STEFANICS: So are there any other questions or comments? So Commissioner Anaya, would you restate your motion?

COMMISSIONER ANAYA: Madam Chair, I made a motion for approval with the condition relative to the fire noted by Commissioner Holian and the staff conditions contained on the case, if there are any. Are there any?

CHAIR STEFANICS: There were no conditions provided.

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, there were no conditions, just a recommendation for denial.

CHAIR STEFANICS: Okay. So we have a motion and a second. I will make a comment. I believe that if we pass this we will have a full vetting of the next step in a public venue and it won't be positive. And I'm just saying what I believe, because I believe that the community has several concerns. I believe that there would have to be a lot of reconfiguration of the property. There would have to be easement and access from a neighbor and several other things. So if I support this, I just want to go on record as saying that does not mean I would support the next plan that comes forward because it seems like there are many problems with it right now. So that's why I was asking Mr. Ross about setting any precedents for further action. Are there any other comments?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I want to make sure I understand what you just said and Steve, maybe you can clarify, or Penny, whichever one of you. This action allows the business to continue functioning and they've functioned for 23 years or

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gives them an opportunity to get a license to function as they've function. I do not want – let me be explicit. I do not want this Commission to set a precedent to say after 23 years of business functioning that now we're going to close it down. There's still additional process if this is approved that the chair is referring to that needs to be vetted. Is that what you just stated, for clarity's sake?

CHAIR STEFANICS: I am, Commissioner, and it is possible that if approval is given today for this variance that when they come back with – what's next? Master plan?

MR. LARRAÑAGA: Master plan.

CHAIR STEFANICS: Master plan, that they might not get approval for the master plan because it might not meet our code.

COMMISSIONER ANAYA: This continues to afford them the opportunity to go through that process. If they do not get this approval today then they have to cease and desist operations?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: Okay. Thank you, Madam Chair. There's still an additional process coming forward that will be vetted that this Commission has to hear and then make a decision on.

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, yes, the master plan process, preliminary and final development plan, meeting all code requirements.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR STEFANICS: Thank you, Commissioner Vigil.

COMMISSIONER VIGIL: You're saying that if we vote against it there's a cease and desist order on them?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no. We have a notice of violation for operating a business without a business license. So if they get denied to be recognized as a special use under the Agua Fria ordinance to go forward with the master plan, if they can't get a business license, they would have to – if they keep on going we would have to file them into court and the court would decide to move them out. But yes, they would have to stop business because they're not doing it per code requirements in their business license.

COMMISSIONER VIGIL: So all that's required at this point in time is for them to continue operating their business with a business license and then come back with a master plan. Is that correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, not entirely. We can't issue a business license because they need to qualify through this variance as a special use to qualify to go forward under the Agua Fria Ordinance for a master plan, to zone the property for that type of use.

COMMISSIONER VIGIL: Is that correct? Those consequences are dire. Mr. Ross, he's actually saying if we choose not to allow this variance that in fact the applicant can't continue their operation of their business unless they get a business license?

MR. ROSS: Madam Chair, Commissioner Vigil, they need to get a business license, sure, but what this is is concerning land use, use of the property. And under the ordinance my understanding is a very truncated, very strange process which will not be this

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way under the new code, but in order to even get the zoning that they need they need to first get the variance, which is what they're asking for right now. When you hit the master plan step you're going to be assessing whether the proposed use of the property is consistent with the plan and consistent with adjoining uses, whether it should be rezoned for this use. With a use variance it's a very high standard to meet. But if they don't get this step accomplished, irrespective of the business license they don't have the proper zoning to do what they're doing on the property and they would have to stop doing it. That's how it works. The new code will be much simpler, I assure you, on the issues like this.

COMMISSIONER VIGIL: Okay. Thank you.

CHAIR STEFANICS: Thank you. Any further questions or comments. Okay, we have a motion and a second on approval. Let's read the right language here. Is to request a variance of the ordinance to allow a towing business as a special use under the zoning use table on .70 acres. Now, Mr. Ross, this seems like we are approving a variance to continue on.

MR. ROSS: Madam Chair, it's a very strange part of the existing Land Development Code and that's why there are all these questions I know are coming because it seems like why would you have a variance and then not deal with the zoning at the same time. But that's the way it works. It should not establish a precedent but it would check off a box that they would need to even file for a zone change on the property.

CHAIR STEFANICS: So I guess I do still have another question. Mr. Larrañaga or Penny. So let's say this gets approved this evening. This process could take how long for the next level, the master plan to come back to us to be approved?

MR. LARRAÑAGA: Madam Chair, master plan, preliminary development plan and possibly the final could be all rolled into one it could take four to six months for them to go through the process. They submit for all the master plan requirements. That would be reviewed by County staff and state entities, just like any other master plan. We'd create a report with all the reviews. If they meet all the requirements then it would go out to the County Development Review Committee for –

CHAIR STEFANICS: So if this were to take four to six months and we have a new code that comes out during that period of time, I don't believe this would qualify under the new code in that area.

MR. ROSS: Madam Chair, one of the advantages of the new code is there will be a zoning map and you will make the decisions concerning the – at least preliminary decisions concerning all this zoning at the time you deal with the map. And so – well, that's true; I'd forgotten about that. This is in the Agua Fria plan so it would be taken up later when all those plans are addressed. But at some point you'll be looking at the whole community as a whole and be able to make a better informed decision on this kind of application I would think.

CHAIR STEFANICS: Commissioner Vigil.

COMMISSIONER VIGIL: Having participating in the planning process of Agua Fria Village, the special use exception was not intended to really create far more usage for the village with regard to increased either density or usage of commercial vehicles or commercial transactions. As a matter of fact, special use was identified to look at some of the

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new potential businesses that would be coming into that village. I guess, and I'm sorry, Mr. Anaya, you've probably gathered by now I'm going to have to not vote in favor of this because I hope you understand that I represent the village as a whole with regard to this and their concerns have better than this and it's tugged at my heart, because the villagers concerns are Agua Fria has always been dumped on, and really I preach that all over the place because one only needs to drive from the city all the way down to the other limits of the village and you'll see where you have a water tower next to one of the oldest traditional historic churches.

You have a statue-like, castle-like structure next to one of the most historical homes in the state. You have the Camino Real ending there next to businesses that have cropped up that include CPA business, tax businesses, used car sales. Nobody was really helping the villagers out at one point in time until the code went into place. And nobody was really helping them out until they took it upon themselves to empower themselves to create their own destiny through their planning process. And their planning process doesn't only have the mission of allowing special uses, not increased usage. And that was specifically stated with other businesses that are there.

So you also are my constituent. I hope you can understand where I'm coming from with this. I really need to represent what's in the best interests of the processes that have been put in place since I have represented this area. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. This is not a public hearing. I'm sorry.
Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Commissioners, I think we should not make light of the fact that this business has provided livelihood, money and resources and food on the table for a family. And I think I even said it on the record at the last meeting when we had the last hearing. I think I even told the Anayas and I'll tell them again that as this evolves through the process there may be a scaled down version of what you've evolved into, but to put you in a position of not having that opportunity is where I have my frustration as a Commissioner and I would hope that a majority of the Commission would take into consideration that this is about family, livelihood and that there's still a process by which there's going to be a review and analysis of the site and what can and cannot be done with additional recommendations to go along with fire recommendations and others but that this gives you that opportunity to continue through that process and doesn't end it here tonight. Thank you.

CHAIR STEFANICS: Commissioner Anaya, would you be open to an amendment that would indicate that the master plan would need to come forward prior to six to eight months? If it passes?

COMMISSIONER ANAYA: I would accept that as an amendment, if the seconder will accept it.

COMMISSIONER MAYFIELD: Second, Madam Chair.

CHAIR STEFANICS: Okay. Let's say eight months, maximum.

COMMISSIONER ANAYA: I would accept that, Madam Chair.

CHAIR STEFANICS: So the reason, Commissioners, I'm making that amendment is that if this is a livelihood that has to be adapted, changed, relocated, there is a

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period of time in which to do that or in which to make drastic changes to the business. Any further comments? And I truly do appreciate Commissioner Vigil's comments for the community. I also appreciate that this is the family's livelihood, but unless there's going to be drastic changes it's not going to go forward anyway.

So we have a motion, we have a second, we have an amendment. All those in favor of the amendment first, please say aye.

The motion passed by unanimous [5-0] voice vote.

CHAIR STEFANICS: Okay, so there is an amendment adopted. Now we are back onto the motion with the amendment that if this is approved, this variance, that the master plan would have to come back to us before the end of eight months.

The motion passed by majority [3-2] voice vote with Commissioners Anaya, Mayfield and Stefanics voting with the motion and Commissioners Holian and Vigil voting against.

CHAIR STEFANIS: Thank you very much. It's 3-2. You have eight months.

[Commissioner Vigil left the meeting.]

XVII. A. 4. BCC CASE # MIS 07-5502 Apache Springs Subdivision Extension. Beverly Chapman, Applicant, Joe Ortiz, Agent Request a One-Year Time Extension of the Preliminary and Final Plat and Development Plan Approval for the Apache Springs Subdivision. The Property is Located at 87 Camino Valle, within Section 10, 11, 14, and 15, Township 15 North, Range 10 East, (Commission District 4)

VICKI LUCERO (Case Manager): Thank you, Madam Chair. On December 14, 2010, the BCC granted approval of a two-year time extension of the Preliminary and Final Plat and Development Plan for the Apache Springs Subdivision. On May 13, 2008, the BCC granted Preliminary Plat and Preliminary Development Plan approval for the Apache Springs Subdivision which consisted of 16 residential lots on 40 acres.

On November 18, 2008 the BCC granted Final Plat and Development Plan approval for the Apache Springs Subdivision.

~~Article V, Section 5.3.6 of the County Land Development Code states, An approved or conditionally approved preliminary plat shall expire twenty-four months after its approval or conditional approval. Prior to the expiration of the preliminary plat, the subdivider may request, from the Board, an extension of the preliminary plat for a period of time not exceeding thirty-six months.~~

Article V, Section 5.4.6 of the Code states, An approved or conditionally approved final plat, approved after July 1, 1996 shall be recorded within twenty-four months after its

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VII. NEW BUSINESS

- A. CDRC Case #Z/PDP 13-5060. Robert & Bernadette Anaya, Applicants, Talia Kosh, Agent, request Master Plan Zoning and Preliminary Development Plan approval for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2). The request includes that Final Development Plan be approved administratively. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2)

Case Manager Jose Larrañaga gave the staff report as follows:

"On August 14, 2012, the Board of County Commissioners approved a request, by the Applicants, for a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the BCC. The use as a towing company falls under the category of Vehicle service not listed which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

"The Applicants request Master Plan Zoning and Preliminary Development Plan approval to allow a towing business on .33 acres ±. The request is to allow the storage of eight tow trucks on the site. The Applicants propose to divide the existing .70 acre ± parcel and create a .33 acre ± lot to be utilized for the towing business. The other lot, which is where the Applicants currently reside, will remain as residential. The Applicant also requests that Final Development Plan be processed administratively.

"The Applicants state that there is a need for the tow trucks to be in close proximity to their residence is to be able to respond to any emergency calls in a timely fashion. The Applicants also state that they wish to utilize the .33-acre site to store personal recreational vehicles.

"Staff's response: the .33-acre site shall maintain a hammerhead 60' in length and 20' in width, parking spaces for eight large tow trucks, and the circulation of these vehicles, landscape, retention ponds and a dumpster. The Applicants have not demonstrated where the personal recreational vehicles would be placed that would still allow them to maintain the site requirements for the towing business on .33 acres. To combine the placement of two recreational vehicles, one boat, two low-boy trailers and other personal vehicles with the proposed towing business may significantly hinder the business activity on the site. The Applicant has not submitted a circulation plan demonstrating internal vehicular circulation.

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“Building and Development Services staff have reviewed this project for compliance with pertinent Code requirements and have found that the facts presented support the request for Master Plan: the Application is comprehensive in establishing the scope of the project; the Application satisfies the submittal requirements set forth in the Land Development Code.

“The review comments from State Agencies and County staff have established findings that this Application is in compliance with state requirements, Ordinance No. 2007-2 and Article V, § 5, Master Plan Procedures of the Land Development Code.

“Building and Development Services staff have reviewed this project for compliance with pertinent Code requirements and have found that the facts presented do not support the request for Preliminary Development Plan: information of internal vehicular and pedestrian circulation, and ingress and egress has not been submitted; conceptual plan for outdoor lighting, including type, size, location of fixtures has not been submitted; the Application does not comply with Article V, § 7.1.2.e & § 7.1.2.j and Article III, § 4.4.”

Mr. Larrañaga stated staff was recommending conditional approval for Master Plan Zoning to allow the storage of eight tow trucks, to be utilized as a towing business, on .33 acres ±. If the decision of the CDRC is to recommend approval of the Applicants' request for Master Plan, staff recommends imposition of the following conditions:

1. The Applicant shall comply with all review agency comments and conditions, as per Article V, § 7.1.3.c.
2. Master Plan with appropriate signatures shall be recorded with the County Clerk, as per Article V, § 5.2.5.
3. The Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards).

Mr. Larrañaga added staff has deemed the request for Preliminary Development Plan incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j (Development Plan Requirements) and Article III, § 4.4 (Development and Design Standards). Therefore staff recommends denial of the proposed Preliminary Development Plan. Staff recommends that the Preliminary and Final Development Plan be presented to the CDRC for consideration after the recordation of the Master Plan.

Chairman Gonzales asked what “conditional” meant in the recommendation, and why the preliminary plan had to return to the committee. Mr. Larrañaga explained “conditional” referred to the conditions listed and successful compliance with review comments by the agencies involved. Once the conceptual master plan is approved the CDRC will get another look at the preliminary and final development plans. During initial agency review the circulation plan was deemed incomplete as to the arrangement of all the vehicles, and the lighting plan also needs further work.

Referring to a reference in the report to the lack of a business license, Member Martin asked if that had been obtained. Mr. Larrañaga stated that deficiency is what started the process and the initial Notice of Violation. At that point, since they did not meet the standards of the Agua Fria Ordinance they were required to come in with a master plan. Acquiring a business license will be the last step.

Member DeAnda asked about the parking requirements and Mr. Larrañaga indicated a circulation plan has been turned in but is incomplete. Member DeAnda asked if the Agua Fria Village Association has reviewed the plan. Mr. Larrañaga said the applicant presented this project to the AFVA on February 4th as required by the ordinance. Village Association President William Mee stated he preferred to not get involved.

In response to a question from Member Katz, Mr. Larrañaga said the applicants have submitted information about water and sewer services. The .33-acre lot already has water and sewer. The remaining third of an acre, being commercial does not have to meet density requirements but they will also connect to water and sewer.

Member Katz asked about the circulation and lighting. Mr. Larrañaga said the circulation plan was submitted too late to go into the packet and specifics of the lighting plan have yet to be submitted.

Talia Kosh, serving as legal counsel for the applicant stated they have worked with staff in detail on the remaining issues. It was agreed to return when the last issues were taken care of.

Duly sworn, Bernadette J. Anaya indicated it would be convenient to continue running the business the way they are. They intend to comply and do what needs to be done the right way.

Ms. Kosh said if they receive master plan approval today, by the time they get to BCC they will be able to get master plan approval, then return to the CDRC for preliminary and final development plan approval.

Mr. Larrañaga noted that the code states an application is supposed to return to the CDRC for approval of the more detailed plans.

There was no one from the public wishing to speak.

Member Katz moved to conditionally approve CDRC Case #Z/PDP 13-5060 master plan with staff conditions with the understanding preliminary and final would be presented at a later date. Member Martin seconded.

Attorney Rachel Brown said when the rest of the application is deemed complete it will come back to the CDRC. Land Use Administrator Penny Ellis-Green explained staff is allowed ten days to deem the submission complete and then there is a 30-day review

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period. Legal notice has to take place, so the earliest the application could return would be in June.

The motion passed by a 4-1 voice vote with Member DeAnda casting the nay vote.

B. PETITIONS FROM THE FLOOR

None were presented.

C. COMMUNICATIONS FROM THE COMMITTEE

Member Martin said she would not be able to attend the next meeting.

D. COMMUNICATIONS FROM THE ATTORNEY

None were presented

E. COMMUNICATIONS FROM STAFF

. The next meeting was scheduled for May 16, 2013.

G. ADJOURNMENT

Having completed the agenda and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at 4:30 pm.

Approved by:

Juan Jose Gonzales
Juan Jose Gonzales, Chair
CDRC



COUNTY CLERK

Before me, this 16th day of May, 2013.

My Commission Expires: _____

Notary Public

Submitted by:
Debbie Doyle
Debbie Doyle, Wordswork

NB13-60

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

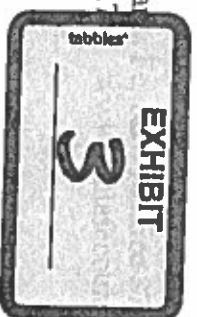
Katherine Miller
County Manager

CASE NO. CDRC MP 12-5060 ROBERT AND BERNADETTE ANAYA MASTER
PLAN ZONING
ROBERT AND BERNADETTE ANAYA, APPLICANTS

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on June 11, 2013, on the Application of Robert and Bernadette Anaya (hereinafter referred to as "the Applicants") for Master Plan Zoning approval for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) on 0.33 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicants request Master Plan Zoning approval to allow a towing business on 0.33 acres \pm . The request is to allow the storage of eight (8) tow trucks on the site. The Applicants propose to divide the existing .70 acre \pm parcel and create a .33 acre \pm lot to be utilized for the towing business. The remaining lot, which is where the Applicants currently reside, will remain residential.
2. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East.



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3. On April 18, 2013, the County Development Review Committee (CDRC) met and acted on this case. The request before the CDRC was for Master Plan Zoning and Preliminary Development Plan approval. Staff recommended Master Plan approval as the request for Preliminary Development Plan was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j (Development Plan Requirements) and Article III, § 4.4 (Development and Design Standards). The decision of the CDRC was to recommend approval of the Applicants' request for Master Plan and denial of the Applicants request for Preliminary Development Plan. The Applicants have since altered the submittal to reflect the request for Master Plan Zoning only.

4. Ordinance No. 2007-2, § 10.5 (Village of Agua Fria Zoning District Use Table) states: "a Special Use is allowed only if a Development Plan and Master Plan are reviewed and approved by the Board of County Commissioners".

5. Article V, § 5.2.1.b (Master Plan Procedure) states: "a Master Plan is comprehensive in establishing the scope of a project, yet is less detailed than a development plan. It provides a means for the County Development Review Committee and the Board to review projects and the sub-divider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a preliminary and final plat approval".

6. The Applicants state that there is a need for the tow trucks to be in close proximity to their residence to be able to respond to any emergency calls in a

timely fashion. The Applicants also state that they wish to utilize the .33 acre site to store personal recreational vehicles. The Applicants have operated a growing towing business in the vicinity for many years.

7. The Application is comprehensive in establishing the scope of the project.

8. The Application satisfies the submittal requirements set forth in the Land Development Code.

9. Merit Bennett and Talia Kosh, on behalf of the Applicants, submitted material and testified in support of the Master Plan.

10. The Applicants, Robert and Bernadette Anaya, spoke in favor of the Master Plan.

11. Rosemary Medrano and Henry and Georgia Romero spoke in opposition to the Master Plan. The opponents based their concerns on an increase of traffic on Agua Fria, accessibility of emergency vehicles, parking of tow trucks along Ben Lane, noise, flashing lights, 24 hour activity and the development being contrary to the goals set forth by the Traditional Community of Agua Fria to maintain and nurture a peaceful family neighborhood environment.

12. During the BCC meeting there was a lengthy discussion regarding the proposed access. The Master Plan drawings as submitted showed in concept the proposed hammerhead turn around as well as the turn radius at the intersection of Agua Fria and Ben Lane. It was stated that the Applicants would provide the required 28-foot, inside, turn radius at the intersection of Agua Fria and Ben Lane. This will be adequately addressed with the Preliminary Development Plan Application

13. Staff recommended the following conditions for approval of the Application:

- a) Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5.
- b) Preliminary and Final Development Plan shall be submitted in a timely manner, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration.
- c) The Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards).
- d) Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan.

14. The BCC suggested the following conditions for approval of the Application:

- a) No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.
- b) The Applicant shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of this Order.

15. The Application for Master Plan Zoning for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) on 0.33 acres should be approved conditioned on the Applicant complying with Staff and BCC conditions.

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IT IS THEREFORE ORDERED that the Applicants are granted Master Plan Zoning for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) subject to the following conditions:

1. The Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;
2. A Preliminary and Final Development Plan shall be submitted within ninety days of issuance of this Order, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
3. The Applicants shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards);
4. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
5. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.

IT IS SO ORDERED.

This Order was approved by the Board of County Commissioners of Santa Fe County on this 13 day of August 2013.

The Board of County Commissioners of Santa Fe County

By: Kathy Zolna
BCC Chairperson

Attest: Geraldine Salazar
Geraldine Salazar, County Clerk



Approved as to form:
Stephen C. Ross
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
I Hereby Certify That This Instrument Was Filed for
Record On The 20TH Day Of August, 2013 at 03:59:28 PM
And Was Duly Recorded as Instrument # 1715555
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Deputy Marcello Salazar Geraldine Salazar
County Clerk, Santa Fe, NM

RECORDED 8/20/2013

SFC CLERK RECORDED 07/10/2013

COMMISSIONER ANAYA: Are you okay? It's in your district, Madam Chair.

CHAIR HOLIAN: Okay. Then I will make a motion then to approve with staff conditions.

COMMISSIONER ANAYA: Second.

CHAIR HOLIAN: Okay. I have a motion and a second for approval with staff conditions for BCC Case #13-5150.

The motion passed by unanimous [5-0] voice vote.

CHAIR HOLIAN: Thank you, Mike and thank you, Mr. Shrader.
Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I have a lot of questions that come in and I rely on Vicki and Wayne and Penny to answer a lot of those questions on a daily basis. And just coupling on what Commissioner Stefanics says, I think we need to make sure we're all on the same page as to what's in the recommended code and that staff is all on the same page with that because I too agree that there are some structures that are for ag purposes or small accessory structures in nature that we shouldn't be overburdening our public and shouldn't even have permits in several of those cases. So as long as we're clear across the board and everybody's singing on the same sheet of music I think that's going to be important because right now, it is required for everything. Right, Mr. Dalton?

WAYNE DALTON (Land Use): Madam Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: Thank you, Madam Chair.
CHAIR HOLIAN: Thank you.

- XVIII. A. 2. CDBC CASE # Z 13-5060 Robert & Bernadette Anaya Master Plan/Preliminary Development Plan. Robert & Bernadette Anaya, Applicants, Talia Kosh, Agent, Request Master Plan Zoning Approval for a Commercial Towing Business as a Special Use Under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2). The Property is Located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East (Commission District 2) [Exhibit 2: Letter of Opposition]

JOSE LARRAÑAGA (Case Manager): Thank you, Madam Chair. On August 14, 2012, the Board of County Commissioners approved a request, by the Applicants, for a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table. A special use is an allowed use which is subject to Master Plan approval by the BCC. The use as a towing company falls under the

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category of vehicle service not listed which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

On April 18, 2013, the County Development Review Committee met and acted on this case. The request before the CDRC was for Master Plan Zoning and Preliminary Development Plan approval. Staff recommended Master Plan approval as the request for Preliminary Development Plan was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j, and Article III, § 4.4. The decision of the CDRC was to recommend approval of the Applicants' request for Master Plan and denial of the Applicants request for Preliminary Development Plan. The Applicants have since altered the submittal to reflect the request for Master Plan Zoning only.

The Applicants request master plan zoning approval to allow a towing business on .33 acres. The request is to allow the storage of eight tow trucks on the site. The Applicants propose to divide the existing .70-acre parcel and create a .33-acre lot to be utilized for the towing business. The remaining lot, which is where the Applicants currently reside, will remain as residential.

The Applicants state that there is a need for the tow trucks to be in close proximity to their residence to be able to respond to any emergency calls in a timely fashion. The Applicants also state that they wish to utilize the .33-acre site to store personal recreational vehicles.

Staff's response: the .33 acre site shall maintain a hammerhead 60' in length and 20' in width, parking spaces for eight large tow trucks, and the circulation of these vehicles, landscape, retention ponds and a dumpster. To combine the placement of two recreational vehicles, one boat, two low-boy trailers and other personal vehicles with the proposed towing business may significantly hinder the business activity on the site.

Ordinance No. 2007-2, § 10 states, a Special Use is allowed only if a Development Plan and Master Plan are reviewed and approved by the Board of County Commissioners.

Article V, § 5.2.1.b states: a Master Plan is comprehensive in establishing the scope of a project, yet is less detailed than a development plan. It provides a means for the County Development Review Committee and the Board to review projects and the subdivider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a preliminary and final plat approval.

Article V, § 5.2.4.b.2 & 3 state, the County Development Review Committee and Board shall consider the following criteria in making determinations and recommendations for approval or amendment of master plans. Suitability of the site to accommodate the proposed development; suitability of the proposed uses and intensity of development at the location.

Building and Development Services staff have reviewed this project for compliance with pertinent Code requirements and have found that the facts presented support the request for Master Plan: the Application is comprehensive in establishing the scope of the project; the Application satisfies the submittal requirements set forth in the Land Development Code. The review comments from State Agencies and County staff have established findings that this

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Application is in compliance with state requirements, Ordinance No. 2007-2 and Article V, § 5, Master Plan Procedures of the Land Development Code.

Staff recommendation is approval for Master Plan Zoning to allow the storage of eight tow trucks, to be utilized as a towing business, on .33 acres, subject to the following conditions. Madam Chair, may I enter these conditions into the record?

CHAIR HOLIAN: Yes, you may.

[The conditions are as follows:]

1. Master Plan with appropriate signatures shall be recorded with the County Clerk, per Article V, § 5.2.5.
2. Preliminary and Final Development Plan shall be submitted within a timely manner, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration.
3. The Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards).
4. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan.

MR. LARRAÑAGA: Thank you, Madam Chair and I stand for any questions.

CHAIR HOLIAN: Are there any questions for staff? Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, Mr. Larrañaga, in your – the information that you provided in the packet, on page 4 of your amended letter/request for master plan, you stated under the category or the paragraph of access and fire code, you stated that the driveway entrance meets the 20-foot minimum width, however, access does not meet the required 28-foot radius. So in this case it seems as though we're accepting the minimum requirements, so I wanted to just raise that as a question. This is also – this language is also in Appendix H, I believe.

CHAIR HOLIAN: What page are you on, Commissioner Chavez? Is it called NB-20?

COMMISSIONER CHAVEZ: NBA-20, actually 21. And I didn't see that, Mr. Larrañaga, in your conditions of approval. Well, maybe because we're accepting the minimum requirements.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, this is part of the submitted from the applicant. Again, the master plan is conceptual. In the drawings they are showing conceptually that they do have, that they're going to need the 28-foot radius as you see in NBA-35. They show that, and then the access road is –

COMMISSIONER CHAVEZ: So is there a better – if you look at Exhibit 2, also, is that what you're referencing?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, that's correct.

COMMISSIONER CHAVEZ: Okay, so that – the master plan in Exhibit 2, that shows the 28-foot easement then? The 28-foot radius?

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MR. LARRANAGA: Madam Chair, Commissioner Chavez, correct. That's on NBA-35. Conceptually they are showing the radius on that.

COMMISSIONER CHAVEZ: Thank you, Madam Chair. That's one question I had, and then the other question I have in reading your summary, Mr. Larranaga, there's discussion about the number of trucks in one paragraph that says eight tow trucks and in another section it says the application shows a nine-space gravel parking lot. Can you explain that?

MR. LARRANAGA: Madam Chair, Commissioner Chavez, yes. Originally they came in for eight tow trucks and when they brought in the drawings the drawings illustrated nine spaces where the tow trucks were supposed to park. That would be to the north side, if you look at that same exhibit on the master plan drawings on Exhibit 2. On the north side, that's where the tow trucks are to be parked, but they came in with nine spaces.

COMMISSIONER CHAVEZ: So we're really approving – the correct number of spaces would be eight then.

MR. LARRANAGA: Madam Chair, Commissioner Chavez, the amount of tow trucks that they're requesting is eight. They're showing nine spaces but for eight tow trucks.

COMMISSIONER CHAVEZ: Okay, well, that confused me a little bit. And then in here there's language that says eight tow trucks, just simple, and then eight large tow trucks. Are they all the same size tow truck?

MR. LARRANAGA: Madam Chair, Commissioner Chavez, they are different sizes. There are some semi-tow trucks to tow semi vehicles or semi-trucks, or larger vehicles I should say. But there are the platform trucks where they can load a car onto it.

COMMISSIONER CHAVEZ: And so the 60-foot hammerhead and the 28-foot radius accommodates the larger vehicles?

MR. LARRANAGA: Madam Chair, Commissioner Chavez, actually the radius for the access on Ben Lane off of Agua Fria, that was actually brought up by Fire because of the width of the road, and Buster Patty is here so he could probably explain that a little better, but because of the width of the road at 20 feet they need that 28-foot radius. The hammerhead is actually for a Fire Marshal requirement also because it is a dead-end road and that way they have room to turn around their equipment in case of an emergency.

CHAIR HOLLAN: Marshal Patty, would you like to address the 28-foot radius?

BUSTER PATTY (Fire Marshal): Madam Chair, Commissioner Chavez, the 28-foot inside radius is what is actually in the code book for a 20-foot wide road entrance. As you can well see, in the city sometimes the radius on the curves is much less than that. That's because the road gets wider. As the road is wider the radius can be much less. But on a 20-foot wide road it requires a minimum of a 28-foot inside radius on the curves to accommodate fire equipment, which would in turn accommodate any size truck that he has.

CHAIR HOLLAN: Any further questions?

COMMISSIONER CHAVEZ: That's it. Thank you, Madam Chair.

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CHAIR HOLLAN: Commissioner Mayfield and then Commissioner Stefanics.
COMMISSIONER MAYFIELD: Thank you. Question for staff, please. Mr. Larranaga, as far as the agency review, why did you contact NMDOT and what approval did they give?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, any master plan or development plan usually goes to DOT, even though it's not off a DOT right-of-way, but automatically we send them to DOT, to Environmental, to State Historic Preservation, for their review and comments.

COMMISSIONER MAYFIELD: And just because of the business and I guess my background, would you think of contacting the PRC to see if they would have any thoughts on the business and the site location?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, we probably won't ever send it to them. What we're looking for, again, is how it fits into the Agua Fria ordinance, how it complies with that ordinance and the Land Development Code.

COMMISSIONER MAYFIELD: Okay. That's all I had for now, Madam Chair. Thank you.

CHAIR HOLLAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair and thank you, Jose. A couple questions. I believe that this has carried over for a while, correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Stefanics, that's correct.
COMMISSIONER STEFANICS: And we had requested that a mediation occur? I'm reading in here that Commissioner Virginia Vigil requested that.

MR. LARRAÑAGA: Madam Chair, Commissioner Stefanics, that's correct. During the variance process there was mediation recommended by this Board, by the Board of County Commissioners. We did get a mediator and in the minutes it explains that the mediator was here at the hearing. The mediator said that they couldn't do any kind of mediation and that's when the Board went forward with the approval of the variance.

COMMISSIONER STEFANICS: So are you indicating, Madam Chair, Jose, that in the mediation there was absolutely no negotiation that occurred?

MR. LARRAÑAGA: Madam Chair, Commissioner Stefanics, there was no mediation at all.

COMMISSIONER STEFANICS: Okay. So Madam Chair, Jose, based upon some of the questions that Commissioner Chavez was asking, would it be possible as we proceed to think about conditions that would limit the number of vehicles on that property? Because I remember there was other property for storage of vehicles, but I wonder if the number of vehicles that are permitted there would appease some of the community. Has that come to any discussion?

MR. LARRAÑAGA: Madam Chair, Commissioner Stefanics, there hasn't been any formal discussion with the applicant as far as limiting them. I believe staff has kind of reviewed it for eight tow trucks. The applicant threw in the personal vehicles and flat bed trailers and so on. They did come up – one of the reasons we recommended denial of the

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preliminary development plan at CDRC, at that point in time they didn't have a circulation plan. They have since submitted a circulation plan and proved to us that the do have room and be able to circulate those vehicles, personal vehicles and eight tow trucks on that piece of property.

COMMISSIONER STEFANICS: Thank you, Madam Chair. That's all for now.

CHAIR HOLLAN: Any further questions for staff? Is the applicant here? Please come forward, and if you are not an attorney please be sworn in and state your name and address for the record.

TALIA KOSH: Madam Chair, Talia Kosh, attorney for the applicant.

[Robert Anaya and Bernadette Anaya were sworn in.]

BERNADETTE ANAYA: Yes.

ROBERT ANAYA: Yes.

MS. KOSH: Madam Chair, Thank you. I'd just like to stress that this master plan is a conceptual plan and again Jose, Mr. Larrañaga, has spoken to the fact that currently, because we did provide a circulation plan that we do have a bit more than what's needed for a master plan and of course we have many more details to establish and provide ahead of us. But we would just like to remind the Commissioners that this is a request for master plan at this time.

CHAIR HOLLAN: Thank you, Ms. Kosh. Any further comments at this point? Any questions for the applicants?

COMMISSIONER CHAVEZ: I have --

CHAIR HOLLAN: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: Could you tell us, of the eight trucks that you're going to have there how many are the larger trucks that you use for your larger calls or your larger vehicles?

MS. KOSH: Commissioner Chavez, that was a question that I did want to address and I want Mr. Anaya to speak to in total an explanation of all the wreckers that will be parked back there.

MR. ANAYA: Could you repeat the question, please?

COMMISSIONER CHAVEZ: Well, I just was asking, of the eight tow trucks that you're going to be parking there -- I guess I'll have maybe two or three questions under that. You're requesting to park eight tow trucks there. Are those eight going to be parked there all the time? And of those eight, how many are the larger trucks and how many are the smaller trucks.

MR. ANAYA: Of the eight we have four.

COMMISSIONER CHAVEZ: Four larger trucks.

MR. ANAYA: They vary in size. They vary in size from a 20-ton wrecker to a 50-ton wrecker.

COMMISSIONER CHAVEZ: 20 to 50-ton. But are they all the same length?

MR. ANAYA: No, they're not.

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COMMISSIONER CHAVEZ: Okay, 20 to 50-ton. And then the other four are the smaller tow trucks.

MR. ANAYA: They're what you call your smaller to medium size tow trucks.

COMMISSIONER CHAVEZ: Okay. And then are all eight parked there all the time?

MR. ANAYA: It's hard to say all the time, but most of the time.

COMMISSIONER CHAVEZ: Okay. Well, here's my dilemma. I know that this is conceptual, but conceptually I have a hard time, with all due respect to the Anayas, with a towing company in the middle of a residential neighborhood. Because essentially, the Agua Fria Village is a neighborhood. That's how I look at it. And so my struggle is to try to balance the need for you to have your business on a property that you've owned and you've been operating that business there for I guess 20 years now -- granted, without a permit. That's beside the point right now. And so I want to balance your needs with the needs of the neighborhood.

So the first question I want to ask is -- and I think Commissioner Stefanics was going in that direction -- I would be more comfortable allowing you to continue your business there but only permitting or allowing the small, the four small trucks to be there. Okay? That would be my preference. Then I also want to ask the applicant, because the condition of approval of the 28-foot radius was not in the conditions of approval. Are you going to be able to invest in that property to make those improvements?

MS. KOSH: Commissioner Chavez, just one comment on your first suggestion on parking the four smaller vehicles there.

COMMISSIONER CHAVEZ: Larger.

MS. KOSH: Well, not parking the larger ones is what you suggested, correct? We'd just like to remind the Commission that this variance as requested -- and I understand your concerns but it was approved conditional upon our meeting all of the different code requirement which, yes, is still in front of us and we still are making attempts to secure that radius including the movement of -- and an application to move the PNM pole among other issues that are still in front of us for the preliminary and final. There's a lot more detail that will have to go into this. We do understand that.

COMMISSIONER CHAVEZ: So you're accepting the need to make the investment for that 28-foot radius?

MS. KOSH: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: And you would accept that as a condition of approval?

MS. KOSH: I believe that that is -- that that was a condition of approval moving forward with the variance by this Commission. And one other comment, just on the area in general, is there's many mixed-use, small businesses in the area and other tow trucks companies in the area so taking into account the mixed-use nature of the neighborhood that they live in, we'd just like to remind the Commissioners of that fact.

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COMMISSIONER CHAVEZ: Okay. I want to ask staff a question. Mr. Larrañaga, this 28-foot easement, is it something that the applicant has to – I know that they've acknowledged that it has to be done. If we approve this and they're not able to do that 28-foot radius, then what happens?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, if the master plan gets approved – again, it's conceptual and we record that – they would have to come back with the preliminary and final development plan to go forward to the CDRC, the County Development Review Committee. With that final development plan they would have to show easement. They would have to replat the property also to split the property into two .32-acre lots, and they would have to show the radius on that with the easement. So if they acquire the easement or if they just get the easement from the property owners that would have to be shown on that plat and on the final development plan. On the plat, to separate the property to show the easement, that signature of the property owner, if they're just allowing that easement would have to be on that plat also. So basically they couldn't go forward with any kind of preliminary or final development plan without those radiuses.

COMMISSIONER CHAVEZ: Okay. I want to go back to the variance that was approved, and this is something that I kind of inherited, so bear with me. The variance granted conceptual approval to park eight tow trucks on the lot that will be designated as commercial.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, no. The variance was to allow to be considered as a special use under the table of the Agua Fria ordinance. Now they are considered – a tow truck company is now considered a special use. Under the special use they have to come forward to the CDRC and to this Board with a master plan and also with the preliminary and final development plan, meeting all the other requirements of the Agua Fria Ordinance, and the Land Development Code.

COMMISSIONER CHAVEZ: Okay, so the number eight is only the number of trucks they're working with. That's what they run their business with, and the circulation pattern or plan that you've identified accommodates those eight vehicles.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes.

COMMISSIONER CHAVEZ: If they're all there at the same time?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. If they're all there. I did scale it off when they submitted so they have enough – I believe each parking area is like 30 feet – I was just glancing at it now. It's about 30 feet deep and they have approximately from 40 to 50, almost 60 feet to back out or drive forward and back into those parking spaces, plus also they proved that they can accommodate some other vehicles, whether it's a mobile home or a camper trailer or whatever on the other side if they're all parked correctly and of course in designated parking spaces. At final development plan they will have to designate those parking spaces through parking bumpers, which could be railroad ties and that would designate the parking.

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COMMISSIONER CHAVEZ: Okay, and then there was also a concern about safety vehicles not being able to access some of the residential properties along Ben Lane or in that general area. Will that be addressed with this master plan if it's approved?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, I believe you're talking about tow vehicles parked on Ben Lane and possibly Mr. Patty can address this as far as access. Naturally, if there's a large tow truck parked on Ben Lane it would be harder for the Fire Department to get in there with an ambulance or a fire truck or whatever the case may be, and get out, to circulate. So, yes, we would – they haven't submitted anything that they are going to park on Ben Lane. Part of that would maybe be part of the business license. If approved through the master plan and development plan the applicant would have to get a business license to slow the tow trucks there and get a home occupation for the residence so they could do their calls and receipts and everything else. Part of those conditions would be that they wouldn't be parking on Ben Lane.

COMMISSIONER CHAVEZ: Are you okay with that? Good. Okay.

CHAIR HOLIAN: Any further questions?

COMMISSIONER ANAYA: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I like Commissioner Stefanics, remember the discussion – we had several discussions related with this case and I, as reflected in the minutes, advocated that they be able to sustain their business and continue operating their business. But if you also look in the minutes at my comments I also reflected that there was also going to have to be some give and take associated with going forward and it would meet exactly the letter of what exists today. So I just wanted to offer that comment to couple with Commissioner Stefanics' comments. And the reason I make that comment is because I believe in the dialogue that we were having as Commissioners, and Commissioner Chavez wasn't here at the time, some of the compromise that was struck on the Commission was based around that premise that there would be some compromise associated with operations.

So I just want to say that on the record and articulate that if there's any tow trucks that exist in the full business, right now, today, and had existed for that period of 20 years. Or you've built up your business over time, correct?

MR. ANAYA: That's correct.

COMMISSIONER ANAYA: Okay. I just wanted to make that comment because I think it was reflected clearly by Commissioner Stefanics.

MS. KOSH: And Commissioner Anaya, if I may speak to that, the give and take and the sacrifices that need to be made to sort of accommodate the interests of the community at large. They are giving up a significant amount of space for the hammerhead for the entire community of Ben Lane, and that's space that they will not be able to build on or get back, and that benefits the entire community. So I just would like to speak to that.

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CHAIR HOLIAN: Thank you, Ms. Kosh. Okay. This is a public hearing. Is there anybody here that would like to speak on this case, either in favor or in opposition? Please raise your hand. And perhaps you could all stand up and be sworn in at the same time.

[Those wishing to speak were administered the oath.]

CHAIR HOLIAN: and please begin to come forward and when you come to the podium please state your name and address for the record. And please speak into the microphone.

[Previously sworn, Rosemary Medrano testified as follows:]

ROSEMARY MEDRANO: Madam Commissioner, members of the Board, my name is Rosemary Medrano and I live at 2094 Botolph Road in the City of Santa Fe. However, I do own property down in the Village of Agua Fria within 100 feet as designated for notification and anyone who has concerns. A couple of things I think that in the hearing tonight have kind of bothered me is that initially, we're talking that eight tow trucks are going to be parked on that property. Now we're hearing that they have nine space for trucks and we're also talking about spaces for recreational vehicles. So that is a concern because if this variance is granted, how are things going to change along the way. If the master plan is approved, the variance is granted. It's my understanding again that everything is in a conceptual environment right now so we really don't know what the end result is going to be. But those are concerns.

When the initial application was made my husband and I submitted a letter to the Commission addressing our concerns in total regarding the allowance of the variance for this business. I would like to take this time now to read the letter as it was issued back in June of 2012, and you should have a copy of this letter in your files. In this letter we're stating that this letter is in response to the owners of the property owners regarding a public hearing for a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, etc. to allow a towing business as a special use under the Zoning Use Table.

We are writing to formally record out opposition to the request for a variance. Our concerns are many but for now I can think of at least nine important one. Please seriously consider the following: increased traffic congestion. Granting a variance will result in more in and out traffic flow to the business from the narrow Agua Fria Street by both business operation vehicles and personal vehicle inquiries. Safety and lifesaving events. Increased traffic flow to the business will cause increased interruption and delay of the already congested Agua Fria traffic causing safety issues for law enforcement and lifesaving emergency vehicle response teams.

Current and future property values. Granting a variance will no doubt negatively impact property values now and in the future. Area is designated as residential, and I think that's something that we need to keep in mind here and I appreciate Commissioner Chavez' recognition of that and Commissioner Vigil's recognition of that at the last hearing. Homes for families, children and the elderly. Allowing this variance will result in degrading its intended purpose. Increased noise and light pollution. Granting this variance will create

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noise, light pollution undesirable disruption to living standards and unrest to the immediate neighborhood.

Generally a towing business is a 24-hour operation. As such the allowing this variance will increase activity and create undesirable loud noises, wandering vehicle night lights and tow truck flashing lights at all times during the night and the daytime, not to mention the disruption it creates to neighborhood animals and dogs at night.

Granting variance is contrary to traditional community of Agua Fria neighborhood goals. The purpose of the traditional community of Agua Fria is to maintain and nurture a comfortable and peaceful family neighborhood environment.

Dangerous and unhealthy environment. Granting this variance will create an unhealthy and dangerous environment for curious neighborhood children and adults. Junk metal, storage of vehicles brings safety and metal junk concerns. Storage of vehicles and junk metal is an ideal place to breed rodents, snakes, diseases and hazards normally not controlled by easy means. Storage of junk vehicles. Vehicles that are not claimed and/or abandoned become an eyesore and/or become ignored. These vehicles become orphans and are likely never removed from the area for years because of various reasons.

This is all documented, like I said, I the letter that was issued and brought to the County on June 7, 2012. I would like to submit a copy of that for the record. [Exhibit 3]

CHAIR HOLIAN: Yes, please give it to our staff.

MS. MEDRANO: And in closing, I would just like to say that we are in opposition of approval of the master plan and we are in opposition of granting the variance for special use. Thank you for your time.

CHAIR HOLIAN: Thank you, Ms. Medrano. Next.

[Previously sworn. Henry Romero testified as follows:]

HENRY ROMERO: Good evening. My name is Henry Romero and I am opposing this variance for many reasons, mostly for what Rosemary just mentioned. The pollution of lights, traffic, the movement of vehicles, not to mention that those tow trucks are parked within ten inches of our wall. I also understand that they indicated ten feet. They're definitely not ten feet from our wall. They're within eight to ten inches from our wall.

Sometimes back when our wall was knocked down some of those booms were sticking into our own property; that's how close they were backed up. We have pictures indicating those trucks are too close to our wall, and if they approve this variance that's going to continue to go on and on and on. It's been going on for many years.

Also, not to forget, they have not been in that area, that business for 24 years like they mentioned. Actually, they were denied 24 years ago from parking junk cars and using the property as keeping old vehicles for whatever reason. I don't know. There's even a burned truck right now on that property. That's not a recreational vehicle. And then they also mentioned there's only eight tow trucks. At one time they mentioned ten tow trucks. Why they have so many trucks backed up to the wall, I don't understand that and I'm really getting upset with that tonight.

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I'm sorry to say this but at this time I'm very upset with the whole situation because the County is not doing their job. You all have not done your job. The PRC has not done their job. Mr. Mayfield at one time worked for PRC. He's aware of all this that's been going on. There's just been a slap on the wrist and it continues and continues. And now I'm getting fed up with it. I'm sorry to say this, but it's true, they're not working, not to our satisfaction or the other neighbors next to the Anayas, which are my other cousins. Those people have to deal with that traffic every day on a daily basis. They have kids, they have grandkids that are back and forth. They have their pets. And that's going to continue to go on and on if this is approved.

Right now they're actually abusing us by parking those trucks that close to our wall. I'm not comfortable with that at all. That's all I have to say.

CHAIR HOLIAN: Thank you, Mr. Romero. Next.

[Previously sworn, Georgia Romero testified as follows:]

GEORGIA ROMERO: First I want to thank Rosemary for her letter because it kind of puts everything into a nutshell. We're talking about ten families. That's what the Anayas say, it affects ten families. They have over a dozen children running in that neighborhood where these tow trucks go to the very end of the property. Yes, there are other businesses in Agua Fria but they all have direct access to the road. They don't go through ten residences to get back onto Agua Fria Street. And then the mixed-use of other companies, every one of those other companies has a County license to work in Santa Fe, in the Santa Fe County area. Two companies did not and it was brought to the attention of the committee. Those two were in the city limits. Everybody else has a license.

In 1989 he was denied parking back there. That's 24 years ago, and he doesn't know he needs a license? If you look at the paperwork it just suddenly came to their attention. It did after they hit our wall. He said it was \$200 to \$500 of damage; it was \$7,000. To this day he has not settled with our insurance company. We're still out our deposit to get the wall going, to get it down. We've had all kinds of problems. They still back up, right up to the wall. I have pictures to show you where they're like inches.

CHAIR HOLIAN: Perhaps you can give the pictures to staff and they will pass them out.

MS. ROMERO: We are dealing with noise, we are dealing with toxic smoke. There's a picture of a truck there that when they turn them on they throw this big thing of diesel smoke up into the air. You can't hang clothes on your clothesline. You hear those trucks coming, I run for my life. I almost died at the last incident. By minutes, I wasn't there when he hit the wall. I had been out getting clothes off my clothesline. You can't barbeque, and the ten residences, people want to have birthday parties, they want to have graduations, they're going to have showers – it just goes on and on. You can't have anything with tow trucks coming right down in front of your house. Because all these pieces of land that are right there where they're going to be trucking are on .75 of an acre, so they're all right there on that easement.

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And right now they're not only just parking – they not only park in the back over by our property, because our property runs the whole wall – I mean a wall runs the whole length of their property, of all their properties. And they park on an easement. They park in front of our gas meters. In an emergency, they're this far away from our gas meters. The gas company can't even get in there to do anything. And it's gone on and on. He testified that he parks ten feet away from the gas meters and from the wall. Well, if he lies down – what is he? Less than six feet? If he lies down the back tires of his truck are going to run over him when he backs up to park his trucks.

He said that every one of those railroad ties has been stamped into the ground. It has not been stamped into the ground. We submitted Exhibit 14 and if he is going to be approved we want truck parking blocks and bumpers, we want bollards, a six-inch minimum diameter with 48 inches above ground and two feet underground. We want evergreen trees to block. We've done our research. We know that the tree has to be planted five feet from the wall with still another five feet on the other side. We want trees every five feet scattered so that we don't have to see his trucks. And we don't want little six-foot, eight-foot trees; we want nice tall ones, ten, twelve foot trees.

That would be like 20, 21 trees because they went out there and measured off this land to cover that area. And then he wants personal recreation vehicles. We have burnt trucks. He's got wrecked trucks. He's got tires. Is all that going to go or do we have to put up with that? Because that brings rodents. And on top of rodents, last year, well the summer – not last summer but the summer before we worked with the feral cat program at the animal shelter. We had 27 cats fixed. Every one of them was poisoned. There's a picture of a dead kitten there where they just ran over it. They would get off their trucks and walk right over it and they would not pick it up.

And all this started when they knocked down our wall, because then we wanted a way to keep him off the wall, keep him out of our yard because the back end of the trucks are being parked into our yard when the wall was down. We had to get a restraining order to be able to fix out wall. Matter of fact, he said his friend was going to do it, well, that friend, when our insurance company got everything together and we got a contractor to build the wall and we got a plasterer, his construction friend hired our plasterer to go plaster for him on another job because his construction work doesn't do plastering.

So in case you decide to accept it I know there's more than eight tow trucks because he reported eight to the County originally. He reported ten to PRC, because we've been working with that. He has numerous violations with PRC because he did not report hitting our wall with damage over \$1,000. They were working without CTIs they were questioning their medical certificates for forgery. I have a report for each of you if you want it. It's been a can of worms and we're still dealing with it. It's been a year and a half. And right now, those radishes off of Agua Fria, the people up there, the C de Bacas don't want to give them that space. They know they're not going to get it. They have to lie. They have to resurvey. All those things before anything can get done.

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And then they park on that easement. They park in front of their trailer and cars have to go around them. They block driveways for the C de Bacas, for the other people on that drive. And if you're going to do this they have to have a time limit for the development plan, and a short one. They've been at it; they're not building any buildings. All they're doing is making a parking. And we're asking you please not to approve again, because it affects ten families and there's like a dozen little children running around. There are pets, elderly people.

And yes, you may know what you're doing as a driver but you don't know if you're going to hit gravel, if you're going to – if a child is going to run in front of you. What happens when someone gets hurt? And right now, they need that radius because when they drive out to Agua Fria and they're coming back into Ben's Lane, they drive forward and have to back up into the other lane, onto oncoming traffic. What happens if there's an emergency or a school bus doesn't expect for them to do that? It's putting the whole village in a lot of danger. Who tells these families it's okay for your loved one or your child or your pet to die because no one took the time to really study this and look at the conflicts and know that gradually they moved back. In 1989 they were denied. In 2002, there's a paper in your packets that says her aunt said it was okay to park trucks on her property. All of it was her property, and gradually they moved back and they moved back and they moved back.

Then they were parking on Anthony C de Baca's property. When he planned to bring a trailer in there first he reported him because he didn't have the right permits and didn't want it there. And the day they brought the trailer he parked his tow trucks in there and they had to get the police department to come in make him move his tow trucks so that he could – Anthony C de Baca, Jr. – could park his trailer.

The extra harassment that goes with this, it's uncalled for. But again, I thank you for your time and I really am asking you to put a very strict time limit on it. They've had more than enough time. They've had ten months, that was extra time that was given to the by your committee over what anybody else would have gotten.

CHAIR HOLIAN: Thank you, Ms. Romero.

MS. ROMERO: Could I just say one more thing? On the internet, because Rosemary brought this up, they advertise that they are a salvage junk yard. They not only have this property, they have one on Industrial Road, and they are licensed, they have a place to work out of. It's approved by PRC. They do have a place to work. And then they have one on Prairie Dog Loop which is over by Nancy Rodriguez Center that you can see from [inaudible] all those semis and everything else that's parked there belongs to the Anayas. They have an acre and a half there.

So it's not like this is the only place they can park, and being that it does affect ten residents, I think that the committee should really, really look at this. Thank you.

CHAIR HOLIAN: Thank you, Ms. Romero. Is there anyone else here from the public who would like to speak? Seeing none, the public hearing is closed. Would the applicant like to make any follow-up comments?

MS. KOSH: Thank you, Madam Chair. Yes. I'm not going to go through every single fact that the Romeros have brought up especially. I will refer back to the initial

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application that we had for variance that discussed the incredible disputed facts that have been raised, including major slander in the community, major extortion and even the allegations of forgery. These are very serious allegations that will be addressed in separate proceedings. But I would like to remind the Commission that the variance has been approved. A lot of these discussions have already occurred in front of this Commission but I do need to respond to a few of them. And then, number one, recreational vehicles have always been a part of this requires. There's five. They're very specifically laid out in the application and those were approved to be parked on that back lot. And there is sufficient room.

And that's who basically maintain that open space that they can utilize for those recreational vehicles. There's only five. Again, yes, there are nine spaces. There will only be eight vehicles are parked there whether or not the Anayas acquire more or less vehicles. We've had many conversations about this. How many can fit back there? There will be eight parked back there regardless. There are nine spaces in the plan, that's to fill out the spaces but each space can accommodate the largest wrecker, we made sure, can accommodate the largest boom. Then we're talking about making this area safer, so yes, we are going to have bollards. Yes, we are going to have railroad ties. A lot of the other requests like having 21 trees – a lot of these are, that's a lot of trees and that's a lot of water. So a lot of these details have to be considered which I think is more appropriate in preliminary and final plan.

Again, there's no increased traffic. Nothing is going to increase. It's going to maintain the level that it is currently if not less. And they have been in business there for 24 years. When they keep referring to the other neighbors from the community, in 1989 they were denied having an area in the back where they could store wrecked vehicles. So that was taken off the table in 1989. They do not tow vehicles back there. They do have a lot. And again, in response to why they need the lot on Ben Lane to park their vehicles is because their other lot is completely full of cars. They could not fit their wreckers there, and also Prairie Dog Loop is unfenced and is subject to vandalism.

They do have a city license and they were under a misconception that that is all that they needed. That is why we are here today in part. And again, the damage amounts that have been discussed are in dispute and I think that that is all I need to respond to. Thank you.

CHAIR HOLIAN: Thank you. Are there any more questions for staff or the applicant? Commissioner Chavez.

COMMISSIONER CHAVEZ: I have a question for staff. Mr. Larrañaga, the applicants and the adjoining property owners brought up an interesting concept and that is within this development or this proposal there needs to be some type of a buffer between this business activity and the residential component. I know that's going to be very hard to do because everything is so close; the lots are so small. But can you address that? I think that's addressed to some degree but just for the record, touch on that.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. In the conceptual plans that are in your packet there they are showing – well, there's an existing six-foot wall between the Romeros and this lot where the proposed storage of the tow trucks is, and the applicants have shown another block wall that would be to the west and then another

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one on the south side and some landscape buffering alongside the easement. Also, the landscape, the trees, at preliminary and final we would figure out exactly how many trees they would need and so on, and that's going to have like a ten-foot buffer, and the plans they have do show bollards, so that way that protects the wall when they do back up. I would assume that the way they would use this property is they would back up the tow truck so that in the case of an emergency call they'd be able to just drive straight out. So this way they wouldn't back up into the wall; they'd hit the bollards first. And bumpers of course, railroad ties placed ten feet away from the wall so that any extension of that truck would not hit the wall.

COMMISSIONER CHAVEZ: I don't know if that's going to be enough, but I'm looking again, as I said earlier. I do respect the residential component. I appreciate that, but I also want to support small businesses as much as possible. So having said that I want to make a motion. Wait a minute. Before I make the motion, Mr. Larrañaga, a couple of other questions. Okay. So you dealt with the buffer and sort of separating that from the existing homes and that. There's no way that we can limit the hours of operation?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, the Board can put any kind of conditions on this proposal that they want but the type of business that it is, they get called at two in the morning or four in the morning.

COMMISSIONER CHAVEZ: See, and there's the rub right there, because most home occupation, if you're under the home occupation ordinance, and you're running a business like this in a residential neighborhood, you usually have hours of business, hours that you run your business. And so I had to ask, because I think that's only fair. In this case, sure, the nature of the business is going to say, well, we can't make money that way, but that's not being sensitive to the residential component completely.

So anyway, I'll move on to something else. What about the light pollution, especially at night? Can we limit that? Can there be screening on those lights or some kind of buffer to reduce that light pollution at night?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, they have proposed again, it's going to lead up to the preliminary and final development plan which they proposed. They did bring in cut sheets and lighting, solar lighting, which is lower to the ground and just kind of so you can see around the yard. Now, the lighting of the trucks, there won't be a six-foot wall around this property until they get out onto the roadway, Ben Lane, that's when you'll see the lights. And just to clarify on the business license, the zoning or the master plan that you're looking at gives them the zoning for a commercial business, so that would be a commercial business on the .33 acres, and to run the books and phone calls and stuff that they would get to go out into vehicles would be run from the home and that would be the home occupation. So in fact they would have two business licenses.

COMMISSIONER CHAVEZ: Okay. Last question. Your staff recommendation says that preliminary and final development plan shall be submitted within a timely manner. Can we impose a deadline or be specific in that area, instead of just leaving it open-ended so that nobody knows if anything is going to happen or when?

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MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. They still are running a business without a business license so it's still a violation until they get this approved and resolved. So the master plan has to be in front of this Board within a certain time limit of approval of the variance, staff was going to pretty much in a timely manner ~ it could be, once the master plan's recorded it could be ~ because it is just a tow yard. Of course submit the preliminary and final development plan to go to the CDRC, maybe within three months to go to CDRC after the recordation of the master plan seems feasible.

COMMISSIONER CHAVEZ: Within 90 days of accepting the master plan.
MR. LARRAÑAGA: Of recording the master plan. We'd have to have staff to do the final order and get all the details done for the master plan and recorded so we could probably do that by the end of July.

COMMISSIONER CHAVEZ: Okay. And then I guess ~ so that would take care of that. So, Madam Chair, I'm going to take a stab at a motion. I'm going to make a motion to approve the master plan with staff's recommendations but I want to modify them and add a couple. That the preliminary and final development plan would be submitted 90 days after the master plan is recorded. And then ~

MS. LUCERO: Madam Chair.

CHAIR HOLIAN: Yes, Vicki.

MS. LUCERO: Commissioner Chavez, the master plan would actually be valid for five years so that's technically how long they would have to record it, so it might be better to impose a timeline based on the approval of the master plan, which if that's what occurs tonight.

COMMISSIONER CHAVEZ: So suggest some language then that would be better.

MS. LUCERO: Something based on a timeline from the date of approval, not the date of recordation of the master plan.

COMMISSIONER CHAVEZ: Are you okay with that? Are we tracking?

CHAIR HOLIAN: Commissioner Chavez, just so I can understand, you're saying that they have to submit the preliminary plat application 90 days from master plan approval?

COMMISSIONER CHAVEZ: Well, it would be preliminary and final
CHAIR HOLIAN: Preliminary and final plat.

MS. LUCERO: Madam Chair, Commissioner Chavez, they would be required to submit both.

COMMISSIONER CHAVEZ: Okay.

CHAIR HOLIAN: Okay. Preliminary and final plat within 90 days of master plan approval. Correct?

COMMISSIONER CHAVEZ: Yes. And then my motion would only include three small trucks and two large trucks.

CHAIR HOLIAN: Three large trucks and two small ~

COMMISSIONER CHAVEZ: Three small trucks and two large.

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CHAIR HOLLAN: Three small and two large.
COMMISSIONER CHAVEZ: That balances the business interest and the neighborhood's needs in my mind anyway.
COMMISSIONER ANAYA: I second that.
CHAIR HOLLAN: Okay. I have a motion and a second. Do we have any further discussion? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Questions, a few questions for staff and for the applicant first. One, Jose, Mr. Larrañaga, as far as the variance that we approved back in August of 2012, and I was looking through my packet, but what conditions or staff recommendations did we put on our variance?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, without looking at the minutes I believe the variance was, again, to allow this use to qualify as a special use and one of the conditions I remember was that it come back with the master plan within eight months of approval of the variance, which this month it met that requirement.

COMMISSIONER MAYFIELD: Well, I don't want to go by memory. I want to know if we put any actual conditions on there as far as working with the Romeros to fix their walls, working with – I just want to know what conditions were put on the variance.

COMMISSIONER STEFANICS: It's November and it's page 46 through 49.
MR. LARRAÑAGA: I'm sorry. What pages did you say, Commissioner?
COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLLAN: Yes, Commissioner Stefanics.
COMMISSIONER STEFANICS: We considered it in August. It came back to us in November of 2012 is when we approved and the motion was made by Commissioner Anaya and – it's several pages, the discussion about the motion. Things kept getting added, but if you get to the November.

CHAIR HOLLAN: NBA-135.
COMMISSIONER MAYFIELD: Okay.
COMMISSIONER STEFANICS: Down at the bottom it says NBA-130, 131, that area is when we did the motion and the conditions. It went on for pages.
COMMISSIONER MAYFIELD: I'll just read through it myself.

CHAIR HOLLAN: So, Commissioner Mayfield, the question is what conditions were put on with approval of the variance?
COMMISSIONER MAYFIELD: Madam Chair, is has the applicant complied with all conditions of the variance that we imposed at the time and has staff verified that they've been in compliance?

COMMISSIONER CHAVEZ: That's a good question.
CHAIR HOLLAN: Do we have a copy of the variance, Jose?
MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, we don't put conditions on a variance. We recommend denial of a variance and therefore we don't put conditions on a variance for approval. Staff recommended denial of the variance and the only

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condition as per these minutes and the final order was that they come in within eight months to present a master plan to the Board of County Commissioners.

COMMISSIONER MAYFIELD: Madam Chair and Jose --

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Typically, when variances come to me on a land use case, as I recall is this Commission will move forward with approval and we do apply conditions. And I know one of the conditions was for this to come back in front of us in eight months with master plan, but I didn't know if any other conditional approvals were given for the variance at that time. That's why I want to make sure. Because again, some photos were put up here and I know there were photos given to us last time, and one of the things, talking to the Anayas also was that they did have these other sites for their yards, and I remember that conversation. I asked that conversation if they had other facilities where they're actually keeping their tow yard because I know it was just alluded to by the Romero's of what the PRC did or didn't do, and they do, the PRC requires a yard where individuals can pick up their vehicles or not pick up their vehicles. In the minutes the Anayas, if I recall, said this is just to store their towing vehicles, not to store any of their -- I don't want to even say salvaged vehicles but their recovered vehicles. They take these vehicles to their actual tow yard.

But in the pictures that were just given to us by Ms. Romero, I don't know the date of these pictures or not and I don't know if they're entered into the record of not, but I still see some pretty old vehicles on that property. So I just want to make sure that if that variance at that time said that these vehicles need to be off that property, they need to be off that property. And if they need to be moved to their storage yard then that's where they need to be moved. I want to know if staff has gone out there and assessed that and I don't know if that was a condition of our last, of our variance when we moved forward with it or if not --

CHAIR HOLIAN: Commissioner Mayfield, could I just respond to that? In reading through this it looks like the motion was to approve the variance but then there was toward the end, Commissioner Stefanics made an amendment that if this is a livelihood that has to be adapted, changed, relocated there is a period of time in which to do that. And so it was mostly the imposition of a --

COMMISSIONER STEFANICS: Madam Chair, there's language in there that says you amended Commissioner Anaya's -- you put an amendment on Commissioner Anaya's -- you put a different condition, and I haven't found that yet.

CHAIR HOLIAN: Okay. Commissioner Chavez, would you like to respond or perhaps Vicki could clarify.

MS. LUCERO: Madam Chair, I was just reading through the minutes and Commissioner Anaya made the motion to approve with conditions represented by Commissioner Holian is what it says, to make sure that they're adequately reflected on the record. But I have to go back and see where there are actually conditions.

COMMISSIONER ANAYA: I could help, provide some clarity.

CHAIR HOLIAN: Yes. We need clarity. Thank you, Commissioner Anaya.

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COMMISSIONER ANAYA: So if you follow through with that recommendation, I asked the question, Madam Chair, made a motion for approval with conditions relative of fire, noted by Commissioner Holian and staff conditions contained on the case if there are any. Are there any? Chair Stefanics: There were no conditions provided. Mr. Larrañaga: Madam Chair, Commissioner Anaya, there were no conditions, just recommendations for denial. Then if you go to the next page it speaks to the questions that I raised that had them been voted down at that time, and I'm paraphrasing now, they would have ceased to have a functional business. Then the question was asked, this continues to afford them the opportunity to go through that process. If they do not get this approval today, then they have to cease and desist operations. Mr. Larrañaga says, Madam Chair, Commissioner Anaya, that's correct.

Mr. Larrañaga: Madam Chair, Commissioner Anaya, yes, the master plan process, preliminary and final development plan meeting all code requirements, which is exactly what we're here with master plan, not preliminary and final. So – and it's reflected in the minutes, based on those discussions the master plan is before us today and there were no conditions established or requirements. That was the purpose of this process in master plan and preliminary and final development plan approval.

So I think the motion on the table is in order.

COMMISSIONER MAYFIELD: And that's fine, but I still have a couple questions.

CHAIR HOLIAN: Yes. You still have the floor, Commissioner Mayfield. COMMISSIONER MAYFIELD: So again, going back to the site and hearing what the motion is, respecting that the Anayas have all their vehicles that they need to try to accommodate, and that this other site should not be a site for any type of storage vehicles, recovery vehicles. And I think hearing the night sky issues, the start-up vehicle issues of the community – I'm just going to say it – I wouldn't want my son woken up at 3:00 in the morning by a truck starting up or light shining in my bedroom eight. But understanding a long-standing business has been there. That's where the compromise has to take place. But looking at all these pictures that were just afforded to us, I don't know. I'm going to have to ask the applicant Are these – I'm going to call them abandoned – are these vehicles that are not being worked on, are they still on the site? Have they been cleaned up?

MS. KOSH: Commissioner Mayfield, I believe that you are viewing pictures of –

COMMISSIONER MAYFIELD: I'll hand them to you. I don't know if you've had an opportunity to see them. So I think if we can hand them –

MS. KOSH: Yes. I'll take a look at them but I'm assuming that they're pictures of the damaged wall?

COMMISSIONER MAYFIELD: No, no. They're pictures of the whole grounds.

MR. ANAYA: These are vehicles that I personally own.

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COMMISSIONER MAYFIELD: Okay. And Mr. Anaya, I appreciate that because then in the request that you have, and I read it somewhere, I guess in one of the pages, so there was a request to have, say, eight towing vehicles. I think there was a request – and let me – I highlighted it somewhere. There was a request to have – here it is. I'm on the summary page and it's staff's summary page. There was a request for staff's response for eight large tow truck vehicles, the circulation of these vehicles, retention ponds, dumpsters, the combination, the placement of two recreational vehicles, one boat, two low-boy trailers and other personal vehicles. So how many personal vehicles are we talking about on the property?

MR. ANAYA: I presume about maybe ten, twelve vehicles that are personally mine, that are registered in my name. Which I have parked at my residence as well as parked back there.

COMMISSIONER MAYFIELD: I'm just going to ask this question. Are they all running vehicles?

MR. ANAYA: Yes, they are.

COMMISSIONER MAYFIELD: Okay.

MR. ANAYA: Excuse me. The only two that are not running are the two burnt vehicles that I purchased, and I purchased those to pull the motors out.

COMMISSIONER MAYFIELD: Yes, and I think that's one of the photos. I thought I saw a truck.

MR. ANAYA: Yes, there's two burnt vehicles.

COMMISSIONER MAYFIELD: Okay, well I guess Commissioner Chavez is – that may be a different issue we have to look at. And I guess that's where I was looking at some of the community concerns, having to deal with – and there's a lot of tires I saw in those pictures. Those are other issues I think for site cleanup that would have to be addressed as far as yard maintenance for the community that maybe would have concerns with that that we would have to have addressed in the master plan.

As far as from the attorney I believe, and I'm going to bring this up because it was brought up. Santa Fe County does have a water-harvesting plan and regardless of water being used or not I know this Commission has voted on water harvesting. I know that was a recommendation. You were asking that we not consider that? But I think this Commission has put that in as conditional of all of our –

MR. ANAYA: Yes, that was brought to the attention – the person that was working on the actual site plan, but due to the topography of the property, that piece of property sits higher than all the other parts of the property so we thought putting in a holding pond where the water's not going to be sitting didn't make any sense. It can be done, but it didn't make any sense.

COMMISSIONER MAYFIELD: Mr. Anaya, I would maybe agree with you on that but I know that I've kind of have this same thought on this bench but it just kind of seems standard fare for this Commission and I don't see how we can do it on one circumstance and not another one. I guess it's something for us to talk up here.

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Another question I need to ask, Mr. Anaya, do you do any maintenance of your vehicles on your site, where you, say, like repair engines or any type of –

MR. ANAYA: Yes, we do. We also race cars and we do other activities. Our ABTVs, we ride those. There's stuff that everyone else out here does and I mean I just – like everyone else, having an RV or a motorcycle or a boat or whatever, we have one. It's just our concern was when this whole master plan went into effect, how were we going to be able to utilize the property so that we wouldn't be in violation if we did. And that's why a lot of this stuff was put into this guidelines that putting together for you guys.

COMMISSIONER MAYFIELD: Okay. And I just wanted all that to be – in case there were questions asked, saying, look, later on, there's maintenance of these vehicles and everything else. That's why it's all put out on to the table. I didn't see this in this plan? Is it somewhere else in here that it wasn't mentioned? Do you have that in there? Your attorney has that in the recommendation here?

MR. ANAYA: Not that I know, sir.

COMMISSIONER MAYFIELD: Okay. That's all I have, Madam Chair. I just wanted to make sure that that was all disclosed. So I guess there's a motion on the floor.

CHAIR HOLIAN: Any further discussion? Questions. All right. We have a motion.

MS. KOSH: Madam Chair, I'm sorry to address you. Mr. Bennett, who is also counsel for the Anayas would also like to make one comment if you don't mind.

CHAIR HOLIAN: Yes. Mr. Bennett.

MERIT BENNETT: Good evening. I wanted to lend a little more perspective that I think might be helpful for the Commission. I've known the Anayas personally for 26 years. I've known them since two years before they started this business and I now the family quite well and I'm quite close to them. There seems to be something missing from this hearing, a perspective that I think needs to be considered. If you will take note that the only opposition in this room to the Anayas' plan is are two individuals who live on the other side of the wall that they bumped into. And that's why we're here, because the Anayas backed up a truck. It bumped into the Romeros' wall. The Romeros can't see the Anayas' property. They can't see their trucks. They don't have children over there, and you have to look at that perspective. The only other person in opposition here is a person who owns property there but doesn't live there. That's the opposition now before the Commission.

There's been a mention of what is in the interest of the community. Well, let's talk about that. This business has for 24 years been pulling people out of wrecks, ravines, ditches, car crashes and they have contracts with City Police, County officials, State Police, that they're obligated to perform. And in order to be able to perform those contracts for our community and pull somebody out of trouble in the middle of the night, they have to have those vehicles, all sizes, immediately available to respond to a call from law enforcement or some other emergency force.

You have to take that into account. You can't just start to limit vehicles arbitrarily, because each vehicle is specified for a particular job. You can't just begin to put arbitrary

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hours on an operation. And if you will note also, they've never, ever, in 24 years had any accident involving any member of this community. The residents who live on the other side of the wall, with the Anayas, are not before you tonight. They're not complaining about the business that's been conducted here for 24 years. Because they all know the service that the Anayas provide to this community. And I think that's missing here, and it's important to take that into consideration, that service to the community into consideration, when you contemplate actions that will limit an ongoing business upon which this family survives and many other people survive. This is a business of service. And to limit this business -- they're not asking to expand it. They're saying we will stay at this level but then to take away from it to me takes something from the community and me having known this family for this long, it just doesn't feel right as a human, and certainly as a friend of the Anayas and a friend of Agua Fria and a friend of my community.

So I would just ask the Commission to take that into consideration.

CHAIR HOLIAN: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I'm going to make one more comment. I applaud Mr. Bennett for fulfilling your obligation as a legal representative of the Anayas and making the comments that you made based on your perspective and your fees associated with your legal representation and your knowledge of this family. Commissioner Mayfield and I, when this particular issue came up, and Commissioner Stefanics, voted on a split vote, three to two to afford this process to take place that we're sitting in today. Commissioner Mayfield and I can be reflected in the minutes and Commissioner Stefanics, and all the Commission at the time asking critical questions, raising concerns, bringing up compromise and other relevant issues associated with the business. No one advocated more than us that voted in the affirmative, myself being one of the ones that had probably the most to say about sustaining a business.

All that being said, had it not been for three Commissioners at the time affording the process to take place, this business wouldn't be functional. I knew from that discussion that there was going to be a need for some compromise and Commissioner Stefanics re-emphasized that and that's reflected in the minutes. Commissioner Mayfield reflected that compromise, who also voted in the affirmative of other issues that may need to be addressed between preliminary and final development plat approval. I think this is an allowable motion, if it passes, that provides reasonable use of functional property and will not put this business out of business.

I think Commissioner Chavez' motion touches on all aspects of the vehicles. It allows for the small and medium size, three of them, and allows for the very large vehicles. So, respecting your perspective and your fashion that you presented it as legal representatives for the Anayas, I can only hope, but that's okay, that you would hear some of the perspective that I brought forth and that Commissioner Chavez, Commissioner Holian, Commissioner Mayfield and Commissioner Stefanics brought forth in the discussion. But this solely exists because my colleagues had enough courage to say we'll let it go to the next step but there's going to be some compromise.

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So that's the corpus of my comments and I applaud Commissioner Chavez and this entire Commission on the discussion that transpired in two very difficult and lengthy meetings where it wasn't just a couple people here. There was people on both sides. Supporting the business, a large group and there was a fair amount of people that were in opposition as well. So I respect you and I hope that whatever decision rendered that we can all respect and progress on to the next phase if that's the wishes of the Commission. Thank you, Madam Chair.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, and I didn't mean to be arbitrary at all. This is not an easy decision for me either way, because we're not going to make anybody happy. And I'm concerned about those that are not here, more than those are here, because we're not hearing from the ones that are not here but they will still be affected in one way or another. They may not know that. But I'm just doing the best I can and hope that the business can adjust and it can continue to operate there and to provide the service that they're providing. So let's call for the vote.


CHAIR HOLIAN: Thank you, Commissioner. We have a motion and a second on the floor for approval of CDRC case #Z -13-5060 with staff conditions and with the extra conditions that the preliminary and final plat application is submitted within 90 days of the master plan approval, and that three small and two large trucks may be parked on the property at any given time.

The motion passed by majority [4-1] voice vote with Commissioner Stefanics casting the nay vote.

XIX. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chair Holian declared this meeting adjourned at 9:20 p.m.

Approved by:



Board of County Commissioners
Kathy Holian, Chair

ATTEST TO:

SFO CLERK RECORDED 07/10/2013

NB13-01

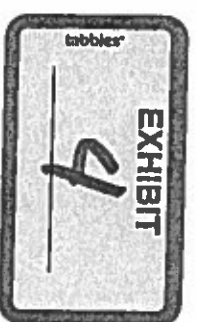
MEMORANDUM IN SUPPORT OF APPLICANTS ROBERT AND BERNADETTE
ANAYA'S REQUEST FOR RECONSIDERATION OF CONDITIONS

CDRC CASE # 13-5060

Applicants submit this Memorandum in Support of their Request for Reconsideration, and therefore state the following:

The Anaya's have made substantial efforts in good faith to comply with the BCC's requests and mandates. However, it has recently become clear that such mandates are not possible for several reasons:

1. Applicants believed that they would be able to effectuate a fair and reasonable solution for all residents on Ben Lane both with their giving up land for the hammer head for the betterment of Ben Lane and for their business. They also believed that they would be able to reach an agreement with the landowners at the entrance of Ben Lane, in order to resolve discrepancies in the need to expand the entrance in order to meet the fire code requirement of a 28' radius. These efforts have failed. After retaining more experts and expending many resources to address this issue, the Anaya's have not been able to resolve the radius issue and must first resolve the fire code issues before moving forward with the preliminary and final development plans for the variance that was approved in this case.
2. The Anaya's were disappointed with the BCC's last conditions of approval of the variance in their August 2013 Order, wherein it states, "no more than three small tow trucks and two large tow trucks may be stored on site at any given time." The Anaya's made good faith efforts to attempt to work within these conditions, including making diligent efforts to find other land that could be developed to store the other wreckers, and have found that there are no readily available and viable options. Therefore, this condition will effectively put the Anaya's out of the tow truck business, as they will have nowhere to store their tow trucks and any possible purchase of land is not only financially unfeasible, but will also have to go through the same variance process. Further, no land is available close enough to the Anayas' residence and work that will allow them to maintain their contracts with state and



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local law enforcement to be able to arrive at the scene of an emergency within the requisite window of time.

Therefore, such conditions and the inability to resolve the fire code radius requirements does not recognize and honor this family and small business' rights to continue their long-standing business and would be a taking under the Takings Clause of the United States Constitution, the Takings Clause of the New Mexico Constitution, a violation of the Federal Motor Carrier's Act, the New Mexico and the Federal Equal Protection and Due Process Clauses through the 14th Amendment and 42. U.S.C. Sections 1983 and 1988.

Overview: Factual and Procedural History of this Case:

1. Robert Anaya, Sr. and Bernadette Anaya have operated Anaya's Roadrunner Wreckers from their home and adjacent property in Agua Fria Village since 1989. They purchased the business from another businessman in Agua Fria Village, under whose ownership it was grandfathered in when the village was annexed and the subsequent zoning code was put into effect. The area where they are located is zoned for mixed-use, and like many neighbors, they operate their business from their property, and maintain an off-site storage location for vehicles that are towed and need to be stored.
2. The Anaya's have applied for a variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village of Agua Fria Zoning District Use Table), to allow a towing business on 0.70 acres. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2). Their CDRC case number is 13-5060.
3. The Anaya's are fifth-generation residents of Agua Fria Village and have contributed to the community's well-being by being active members of the community association, the fire department, the planning committee and the local church. They have raised their children in the Village and provide day-care to their grandchildren from their home, where they operate their successful tow-truck company. The have been recognized as business and community leaders.
4. The company provides emergency towing services for individuals and holds several contracts with state, county and tribal police to provide emergency response to DWI

and other calls. In part, the reason they were awarded these contracts was their proven track record of timely responses and careful handling of towed vehicles and other property related to the accidents. Furthermore, they maintain a small fleet of trucks of varying sizes, including class D, that allow them to navigate difficult terrain and tow heavy loads. To maintain their quick response time (thirty minutes by contract, with some additional time available in extreme circumstances) and protect their tow-trucks from vandalism, the Anaya's must keep their tow trucks on the premises so that if an emergency call comes in, they can get in the proper-capacity vehicle and immediately travel to the location of the incident.

5. As is the case with many properties in Agua Fria Village, the majority of the Anaya's neighbors are extended family members with common ancestors and through marriage. In this case, the complaint of Mrs. Anaya's cousins from an adjacent property, the Romero's, started an investigation of the Anaya's code compliance, which has turned into a costly and time-consuming ordeal. During the process, they have been slandered and harassed as individuals and as a business. The stress and health concerns to the Anaya's are overwhelming as well. They have been targeted and neighbors who support their application have been lied to and discouraged from speaking out in support. Arbitrary and capricious decisions have been made by the board without proper research or factual evidence being presented.

BACKGROUND FACTS

The key facts to this case have been presented to the various county officials at multiple hearings and meetings, and are repeated here very briefly to put the Anaya's claims in context.

The plan for Agua Fria Village supports mixed-use zoning, and several other companies with large vehicles, including other tow companies, are located in the surrounding area. In 1989, the Anaya's purchased a pre-existing tow truck and wrecker company from a neighbor whose business had been grandfathered in. At the time of purchase, the Anaya's acquired the five tow trucks belonging to the previous owner. They also received the transfer of his business license, which was undated, which they believed to be equivalent to a liquor license, in that they believed all of the attending rights and responsibilities from the preexisting company would flow to them.

According to the letter of the Agua Fria Village Association, Mr. Mee, this business was grandfathered in.

The Anaya's have run their business openly and with success since 1989. They have increased to eight tow trucks, each with varying tow capacities and purposes. They do not plan to acquire any additional vehicles. The company presently provides services to individuals and the New Mexico State Police, the Santa Fe County Sheriff's Department, fire department, Sandoval County, tribal police for nearby pueblos, and other governmental entities. Their vehicles are used as part of the emergency response process, and under their contracts they are responsible to extracting and clearing roadways of all debris when called to a job.

Of particular note, the Santa Fe County Police contract for response and towing for their DWI seizures specifies a sixty minute response time to all calls, any day of the week and any time of the day. This contract can be seen as an admission that the county was aware of the Anaya's unique central location within the county and that they would have immediate access to each of their specific vehicles, depending on what requirements might be called for in any given situation. If the Anaya's are forced to relocate any of the trucks away from their property, it may interfere with their contracts due to difficulty meeting the required response times.

Given the nature of the business, the operators and employees of the company carry two way radios and cell phones for dispatch so that they can make the time needed under the contract to assist in every way possible to minimize loss of life, damage to property, and restore roadway access for other motorists. The company maintains a separate storage lot where the towed vehicles are stored, unless they are turned over to the police. This lot is located approximately two miles away from their home and primary business. If the Anaya's are forced to relocate some of their tow trucks to the storage lot, there is a strong chance of vandalism to their property. More important, the increased driving time might lead to safety risks in order to meet compliance with the contracted response times.

Like many New Mexican families, the Anaya's also maintain several personal recreational vehicles on their property for camping, boating, driving and racing. These are not affiliated with the business although they have been accused of storing towed material on their property.

It is worth noting that the configuration of the property held by the Anaya's has changed over the years, as one family elder who passed away traded out one portion of their parcel, which

was originally located directly across from their residence and on which they originally kept the trucks, for a parcel further down Ben Lane, which backs up onto the Romero's property. That lot is essential a tamped down dirt patch where the tow trucks have been moved, and where some of their personal recreational vehicles are kept. The commission has been presented with maps and photographs to make clear the layout and nature of the property in question.

Approximately ten households are located along Ben Lane. Most of the occupants are relatives of varying degrees of sangunity. Some have erected fences or more permanent walls. Based on the placement of the walls, it appears that consultation with the county was not sought prior to building. In fact, it seems that some of the safety code concerns now placing a burden on the Anaya's as they attempt to get approval of their master plan arise from walls blocking off utility easements which were to be used as fire lanes. Further discussion of the hammerhead and fire lanes is included in the next section.

There were no accidents or reports about safety pertaining to the Anaya's tow trucks in their 24 years of operation, a fact of which they are quite proud. Then in 2012, while backing a truck into a spot which permits for quick and easy pull out, Mr. Anaya accidentally tapped the wall which the Romero's had erected in the utility easement which separates their two properties. A portion of the cinderblock wall came down on the Romero's side of the property. The Romero's filed an insurance claim, and the Anaya's consulted with a friend who builds and repairs masonry walls to find a way to make the Romero's whole. Mr. Romero told Mr. Anaya that he could accept payment of \$7,000.00 to settle the issue, which was several thousand dollars above what it would cost to repair. Testimony and letters have presented at the various committee meetings that describe long-standing animosity between the complaining Romero's and the Anaya's. The Anaya's refused to pay the inflated amount, and shortly thereafter a complaint was filed against them regarding having 'junk in the yard' and for operating their business without a license, which has deteriorated into the present situation.

ADMINISTRATIVE PROCESS TO DATE

In February 2012, a criminal complaint was filed against Mrs. Anaya for violation of business regulations and junk vehicles, to which she plead not guilty and the charges were dismissed.

In March 2012, the Romeros obtained a restraining order against the Anayas.

The County Development Review Committee met on June 21, 2012 and decided to recommend the applicants' request for variance be denied. At that meeting, county staff Jose Larranaga explained that the zoning ordinance was established in 1981 and the 1989 business could not be grandfathered in.¹ A notice of violation was issued. He further noted that the applicant did not have a County business license.² On the record, it was established that the applicants have licenses from the City and Department of Transportation and had applied for a County license, but was told by officials to wait until the variance process was completed.³

Board of County Commissioners met on August 14, 2012 and voted to table the request for variance pending mediation between the applicants and persons opposing the request.

Santa Fe County Board of Commissioners Regular Meeting was held on November 13, 2012, and the Anaya's variance application was on the agenda.

The mediator, Rosemary Romero, filed a report with the Santa Fe Board of County Commissioners on October 11, 2013 indicating that the mediation had not occurred and would not be appropriate in this instance. The reasons cited were that many family members did not want to participate (including fear of retaliation, not wanting to air family conflicts in public, and a belief that "having an attorney involved defeated the purpose of mediation.") Although the Anaya's were agreeable to participating in the proposed mediation, they exercised their right to have their attorney serve as their main point of contact.

Santa Fe County Board of Commissioners Regular Meeting was held on June 11, 2013, and the Anaya's variance application was on the agenda. County staff recommended "approval of the Master Plan Zoning to allow the storage of eight tow trucks, to be utilized as a towing business, on .33 acres" subject to certain conditions.⁴ Commissioner Chavez later proposed the Anaya's only be permitted to maintain three small tow trucks and two large tow trucks on their property to "balance" [] the business interest and the neighborhood's needs in my mind anyway."⁵ He went on to say that the situation would require compromise, although it seems the only compromise requested has been for the Anaya's to give up the use of their land. Commissioner Anaya seconded the motion.⁶ In response, Mr. Bennett, counsel for the Anayas, responded that "You can't just start to limit vehicles arbitrarily, because each vehicle is specified for a particular job. You can't just begin to put arbitrary hours on an operation. And if you will note also, they've never, ever, in 24 years had any accident involving any member of this community."⁷ In the end, a motion for approval of the case with staff conditions and with the

extra conditions that the preliminary and final plat application be submitted within 90 days of the master plan approval, and that three small and two large trucks may be parked on the property at any given time was passed by majority [4-1].⁸

An Order was entered on August 13, 2013 granting the Anaya's Master Plan Zoning for a commercial towing business as a Special Use subject to certain restrictions: a) the signed Master Plan shall be filed with the County Clerk; b) the Preliminary and Final Development Plan shall be submitted within ninety days of the issuance of the Order, to be presented to the CDRC for consideration; c) applicants shall comply with Ordinance No. 2007-2, Section 10.6; d) storage of towed vehicles shall not be permitted on the site and shall be so noted on the master plan; 3) no more than three small tow trucks and two large tow trucks may be stored on site at any given time.⁹

The Anaya's have consulted with Morey Walker to prepare a Master Plan, which is now under review. The necessary agencies have been issuing the required reviews of the Master Plan.

One issue of fire-safety has been raised which is creating great problems. Although there is a fire flush along Ben Lane, the County Planners have determined that because there is no through access along Ben Lane due to walls which have been erected which block the utility easements (and the original fire lanes) that a twenty-eight-foot hammerhead must be created at the back of the Anaya's lot to allow a large fire truck to turn around. The Anaya's have illustrated to the Commission that a fire truck could make the required turn-around in the space as it is now configured, but they continue to meet obstacles. Based on his personal experience working as the Village's fire chief and as a family of volunteers, Mr. Anaya does not see how this requirement is necessary or why as a property-owner who happens to be located on the back lot he should bear the complete burden to benefit all of his neighbors.

RESPONSE TO BCC Staff's October 30, 2013 Response to Applicants' Request for Reconsideration:

In this response, Mr. Larranaga states that "The Agent for the Applicants accepted the need to make the investment for the 28' radius and accepted the implementation of the 28' radius as a condition of approval" and that "the Applicants did not appeal the final decision of the BCC." See Staff's response, NB-3. Applicants appreciate Staff's acknowledgement of their diligent and good faith efforts to comply with each of BCC's requests and mandates. Applicants very much

wished to be compliant and work within the parameters set by the BCC and all other administrative agencies. Applicants did so attempt to work within these parameters. Recently, it became very clear that Applicants had done all they could do to try to work within these parameters, spending incredible amounts of resources to do so, and yet they had come up short. The Applicants throw themselves at the mercy of the BCC to assist them in resolving these issues that are not within their capacity to resolve and that will effectively put them out of business without the BCC's reconsideration and extension of time to attempt to address these matters.

CONSTITUTIONAL CLAIMS

TAKINGS UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION

AND N.M. CONST., ART. II, § 20

As an essential element of individual liberty, the Takings Clause was included in the Bill of Rights to ensure the protection of private property from an overreaching government.¹⁰ Federal and state laws are clear that "Private property shall not be taken for public use, without just compensation." Article II, Section 20 of the New Mexico State Constitution states "Private property shall not be taken or damaged for public use without just compensation." This is so whether there is a permanent or temporary physical occupation of the property or if regulation interferes with the character of the land at issue and the "reasonable investment-backed expectations" regarding the land's use."¹¹ "[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."¹² In regard to the Takings Clause, the state must provide a "reasonable, certain and adequate provision for obtaining compensation," both when property is physically taken as well as when a regulation greatly reduces the economic viability of the property.¹³ The Takings Clause is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."¹⁴ Furthermore, the State and its subdivisions cannot claim sovereign immunity to protect itself from liability in takings cases, and the Fifth Amendment is held to be 'self-executing'. See Manning v. Mining and Minerals Division of the Energy, Minerals and Natural Resources Department et al., 140 N.M. 528, 144 P.3d 87 (N.M., 2006).¹⁵ Finally, it is worth noting that the Fifth Amendment has been made applicable to the states through the Fourteenth Amendment's guarantee of due process.¹⁶

The United States Supreme Court has made explicit that each takings case should "be assessed with reference to the 'particular circumstances of each case'."¹⁷ In this case the Anaya's purchased a towing business that had been grandfathered in at the time the Village zoning ordinances were adopted and are believed to have been grandfathered in themselves. They have operated their business with safety and success for 24 years in a mixed-use neighborhood under a zoning plan that encourages and promotes the type of community and family-oriented business they provide. Storage of their tow trucks on their property is essential to their contractual commitments and success to provide timely responses to emergency situations. The county itself requires immediate access to their unique vehicles to respond to the varied towing situations.

As a result of a disgruntled neighbor calling in a complaint, the Anaya's have been targeted and forced to hire legal counsel, pay several thousand dollars in fees for plan drafting, advertising and postings regarding public meetings. Their neighbors and supporters have been threatened and lied to (that they would be forced to give up land or pay higher taxes if they supported the Anaya's). The Commission has arbitrarily and capriciously determined that rather than maintain their eight tow trucks on their property, they can only keep five. Furthermore, the Commission is attempting to cap the number of personal recreational vehicles they may keep on their property. Under the terms of the Master Plan, the Anaya's are being asked, solely among their neighbors, to give up property for a hammerhead to benefit the entire street as a result of other neighbors erecting walls that block the utility easements.

EQUAL PROTECTION & DUE PROCESS CLAIMS

The Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment states "No State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws" and Article II Section 18 of the New Mexico Constitution states "No person shall be ... denied equal protection of the laws." Equal protection prohibits "the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or not based on real differences."¹⁸ The threshold question in evaluating an equal protection claim is whether a law or regulation, results in dissimilar treatment of similarly-situated individuals.¹⁹

Regulations restricting the use of land must be clear and fair and apply equally to all. The N.M. Supreme Court has stated “standard-less regulation that depends on no more than a zoning official’s discretion would seriously erode basic freedoms that inure to every property owner.”²⁰ The Anaya’s would argue that to date, the reviewing agencies actions are arbitrary and capricious, that their decisions are not being supported by substantial evidence and that their actions are not in accordance with the law as it has been established by the U.S. Supreme Court and New Mexico Supreme Court.²¹

The Anaya’s are one of several tow truck companies and other local companies that maintain heavy vehicles on their property to conduct their business efficiently. Counsel for the Anaya’s believe their business was grandfathered in and/or that they have a legal non-conforming use on the property which has not been abandoned. They continue to operate their business while attempting to meet each demand the Commission is placing on them, such as contacting the utility company to move a pole so that there will be a greater turning radius onto Ben Lane.

After more than two decades of running their business safely and providing critical service to the community and state in emergencies, they are being scrutinized for a single incident involving the tapping of a wall. With each telling of the story by the Romero’s the tale becomes more dramatic, invoking dead kittens and the near collapse of the wall onto Mrs. Romero while hanging the wash out to dry. Other opponents claim that children will be lured into the dangerous trucks by their mere presence.

There is no dispute that safety in the community is a rational objective for the town’s zoning. In fact, the Anaya’s were actively engaged in the process at the time the zoning for Agua Fria Village was being considered under the development plan in 2003-2006. They live there and have raised generations of their family there and are intrinsically invested in keeping their neighborhood and village safe. In fact, with their business they help to keep the village safe. None of their operators have been involved in on-the-job accidents. Yet because the county’s zoning office is “complaint driven” the government has been drawn into a neighbor dispute which now threatens the livelihood of the Anaya’s as well as their ability to enjoy their property fully. The proposed hammerhead for fire safety will severely limit their access to their property. The family has been singled out and targeted under the ordinance and the technique for enforcement. The County Commission has imposed substantial financial and emotional

burdens on the Anaya's. There is actual interference as well as injury to the Anaya's, so that they cannot use their back lot for its original intended purpose.

The Anaya's may also bring a claim under 42 U.S.C. Section 1983 showing "that the defendants must have acted under color of law, regulation, custom or usage of the State of New Mexico, and that the plaintiff must have been deprived of federal constitutional rights, privileges and immunities."²² According to the U. S. Supreme Court: "[t]he very purpose of Section 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights - to protect people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial."²³ There is no dispute that the Santa Fe County Commission is acting under color of law for the State of New Mexico in its evaluation of the Anaya's variance request. The Supreme Court has made clear that a municipality may be sued under Section 1983.²⁴ As explained above, the causes of action arising under Article V of the United States Constitution and related Equal Protection and Due Process Claims relate to federal constitutional rights, as well as state rights. 42 U.S.C. Section 1988 allows the court to grant the prevailing party reasonable attorney's fees as part of their costs.

CONCLUSION

The Anaya's would like to continue operating their business from their property in compliance with the county's zoning requirements. They have made every reasonable effort to comply with the various deadlines, notices and other hurdles as they have been brought to light. At times, they have met with contradictory instructions and then penalized for non-compliance.

They are aware that litigation is costly, slow, and unpredictable. They do not want to resort to that if it can be avoided. Rather, they respectfully request streamlined, consistent assistance and cooperation from the county entities that oversee the variance process so that they are not deprived of their livelihood and can continue to enjoy the land that their ancestors have settled.

PROPERTY ALTERNATES PURSUED BY ANAYA'S

1. Robert J. Anaya, Jr. purchased 2 pieces of property just shy of 4 acres @ Reata Road and West Frontage Road to move business. Unable to use because the city of Santa Fe annexed property and turned commercial zoning into residential. IF THE PROPERTY ON REATA ROAD IS RETURNED TO COMMERCIAL ZONING THE ANAYA'S WOULD BE ABLE TO KEEP THEIR OVERFLOW OF HEAVY EQUIPMENT ON THAT SITE.
2. Anaya's have looked at lots near their present storage location on Industrial Road.
 - a. They cannot afford \$1.3 million purchase price for 1.5 acres on Siler Lane.
 - b. Location on Cerillos Road at Ocate – Purchase price \$2.5 million, 7 acres.
 - c. Location on Highway 14 adjacent to PNM purchase price \$960,000, 3 acres
 - d. Land on Airport and Constellation area, 2.5 acres purchase price \$1.1 million.
3. The Anaya's cannot afford property in Santa Fe in its inflated real estate market, nor the 25% down payment prior to potential funding.

¹ Santa Fe County, Board of County Commissioners, Minutes of Regular Meeting of June 21, 2012.

² Id.

³ Id. at 22

⁴ Santa Fe County, Board of County Commissioners, Minutes of Regular Meeting of June 11, 2013 at page 74.

⁵ Id. At page 89.

⁶ Id.

⁷ Id. at page 94.

⁸ Id. at page 95.

⁹ Order dated August 13, 2013.

¹⁰ Manning at pages 89-90

¹¹ Arkansas Game and Fishing Commission v. United States, 568 U.S. ___ (2012) citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435 at n. 12 (1982) and Palazzolo v. Rhode Island, 533 U.S. 606, 618 (2001).

¹² Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922)

¹³ Williamson County Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 194, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

¹⁴ Arkansas Game and Fishing, citing Armstrong v. United States, 364 U.S. 40, 49 (1960). See also First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 318-319 (1987); Penn Central Transp. Co. v. New York City, 104, 123-125 (1978).

¹⁵ See also In Re Held Orders of U.S. West Communications v. N.M. State Corporations Commission, 943 P.2d 1007, 123 N.M. 554 (1997).

¹⁶ Chicago B. & Q.R. Co. v. City of Chicago, 166 U.S. 226, 235-42, 17 S.Ct. 581, 41 L.Ed. 979 (1897).

¹⁷ Arkansas Game and Fishing citing United States v. Central Eureka Mining Co., 357 U.S. 155, 168 (1958) (citing Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1922)).

- ¹⁸ also In Re Held Orders of U.S. West Communications v. N.M. State Corporations Commission, 943 P.2d 1007, 123 N.M. 554, citing Madrid v. St. Joseph Hosp., 1996 NMSC 064p 35, 122 N.M. 524, 535, 928 P.2d 250, 261 (1996).
- ¹⁹ See Madrid, 1996 NMSC 064 p 35, 122 N.M. 524, 928 P.2d 250.
- ²⁰ Smith v. Board of County Commissioners, 137 N.M. 280, 110 P.3d 496 (2005).
- ²¹ San Pedro Neighborhood Association v. Board of County Commissioners of Santa Fe County, 206 P.3d 1011, 146 N.M. 106 (N.M. App. 2009).
- ²² Gomez v. Board of Education, 85 N.M. 708, 711, 516 P.2d 679, 682 (1973); cited by Chapman v. Luna, 102 N.M. 768, 701 P.2d 367 (S. Ct. 1985).
- ²³ Michum v. Foster, 407 U.S. at 242.
- ²⁴ Monell v. Department of Social Services, 463 U.S. 658 (1978).

Daniel "Damy" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

BCC CASE # MIS 13-5061 ROBERT AND BERNADETTE ANAYA
ROBERT AND BERNADETTE ANAYA, APPLICANTS

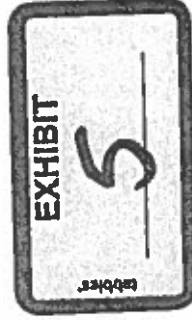
ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on March 25, 2014, on the Application of Robert and Bernadette Anaya (hereinafter referred to as "the Applicants") for reconsideration of four conditions imposed at the time of Master Plan Zoning approval. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is not well-taken and should be denied, and makes the following findings of fact and conclusions of law:

1. On June 11, 2013, the BCC held a public hearing on an Application for a variance and Master Plan Zoning approval for a commercial towing business as a Special Use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table.
2. The Applicants sought a variance because a towing business is not an allowed Special Use under Ordinance No. 2007-2.
3. The Application was granted subject to certain conditions, and on August 13, 2013, the BCC approved an order which granted Applicants Master Plan Zoning to allow a towing business on .33 acres +, conditioned as follows:

- a. Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;

SFC CLERK RECORDED 06/13/2014



1

NB8-108

- b. Preliminary and Final Development Plan shall meet all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
- c. The Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards);
- d. Storage of towed vehicles shall not be permitted on the site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
- e. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;
- f. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of issuance of this Order.
- 4. The Order granting Master Plan Zoning was recorded on August 20, 2013, triggering the start of the ninety days for submission of a Preliminary and Final Development Plan to the County Development Review Committee.
- 5. The Applicants did not appeal the order granting Master Plan Zoning, and instead on September 26, 2013, filed an application seeking relief from the following conditions of approval of the Master Plan Zoning:
 - a. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order;
 - b. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;

- c. The implementation of a landscape buffer on the east side of the site alongside the platted easement;
- d. The listing of personal vehicles that will be stored on the on 0.33 acres.
6. The landscape buffer and the listing of personal vehicles were not conditions of approval, but were elements of the Master Plan submitted by Applicants and approved by the BCC.
7. The subject property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2) and is surrounded on all sides by residential properties.
8. During the hearing on this application, the Applicants stated that the landscape buffer on the east side of the site alongside the platted easement will create a burden on the Applicants to safely park the tow trucks on the site.
9. The Applicants stated that the condition to limit the Applicants to three small tow trucks and two large tow trucks at any given time to be stored on the site will inhibit the business as follows:
- a. The limitation will force the Applicants to seek other property to store the remainder of their tow trucks;
- b. The limitation will affect Applicants' response time to emergency calls;
- c. The limitation will jeopardize the business as it currently exists.
10. The Applicants requested an extension of the 90 day requirement imposed by the BCC to submit Preliminary and Final Development Plan to the County Development Review Committee for the following reasons:

SFC CLERK RECORDED 06/13/2014

a. to provide adequate time to seek relief of the above mentioned conditions imposed by the BCC; and

b. to address the requirement of the 28' radii required by the County Fire Department at the intersection of Ben Lane and Agua Fria Road.

11. On March 11, 2014, the BCC held a public hearing on the Application and then deliberated over the matter in closed executive session on March 25, 2014 and again on May 13, 2014.

12. Article V, § 5.2.4.b.2 & 3 (Master Plan Approval) of the Santa Fe County Land Development Code (the Code) states: "the County Development Review Committee and Board shall consider the following criteria in making determinations and recommendations for approval or amendment of master plans: Conformance to County and Extraterritorial Plan; Suitability of the site to accommodate the proposed development; Suitability of the proposed uses and intensity of development at the location; Impact to schools, adjacent lands or the County in general; Viability of proposed phases of the project to function as completed developments in the case that subsequent phases of the project are not approved or constructed; Conformance to applicable law and County ordinances in effect at the time of consideration, including required improvements and community facilities and design and/or construction standards".

13. The site, within a congested residential area, is not suitable for the proposed business absent the requirement for landscape buffering, and a corresponding limit on the number and type of tow trucks stored on the property, as well as a limit on the number of personal vehicles.

14. The limitation on the number of tow trucks and personal vehicles ensures sufficient circulation within the site and ensures access to the property for emergency response. The limitation also reduces the impact of the nonconforming uses on adjoining properties.

SFC CLERK RECORDED 06/13/2014

15. There are properties available in Santa Fe for storage of tow trucks, and Applicant found and utilized locations to store trucks off site after receiving Master Plan Zoning.

16. The landscape buffering is required by the Code and ensures an adequate and aesthetically acceptable buffer between residential and non-residential properties. The Application for Master Plan Zoning included the landscape buffer as required by Code rather than seeking a variance of that requirement. The site plan submitted by the Applicants provided adequate circulation of vehicles on the site.

17. The 90 day requirement to submit Preliminary and Final Development Plan to the County Development Review Committee ensures that the business, which Applicant admitted during the public hearing is still in operation in a residential neighborhood without a County business license, timely comes into compliance with the conditions of Master Plan Zoning approval.

18. The approval of Master Plan establishes operation of a business consistent with the adjoining residential user, and ensures a suitable intensity of uses at the location. The conditions coupled with the specifics of the proposed Master Plan create a balance between the interests of the residential community which will be impacted by the towing business and the interests of the Applicants in operating a towing business from that location. Removal of the two conditions of approval, the landscape buffers and limits on personal vehicles, would result in a commercial business not suitable for the densely developed residential area within which it operates.

19. Having considered the factors set forth in Section 5.2.4(b) of the Code, the BCC concludes that the Application should be denied, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended until thirty days after recording of this Order.

SFC CLERK RECORDED 06/13/2014

IT IS THEREFORE ORDERED that the Application for reconsideration of two conditions imposed by the BCC at the time of Master Plan Zoning approval and the two elements of the Master Plan proposed and approved is denied, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended until thirty days after recording of this Order.

IT IS SO ORDERED.

This Order was approved by the Board of County Commissioners of Santa Fe County on this 18th day of June 2014.

The Board of County Commissioners of Santa Fe County

By: [Signature]
Daniel W. Mayfield, Chair

Attest:

[Signature]
Geraldine Salazar, County Clerk
6-11-2014



Approved as to form:

[Signature]
Gregory S. Shaffer, County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
I hereby certify that this instrument was filed for
Record On The 13TH Day Of June, 2014 at 11:45:38 AM
and was duly recorded as instrument # 1739036
of the Records of Santa Fe County

Witness My Hand And Seal Of Office
[Signature] Geraldine Salazar
Deputy County Clerk, Santa Fe, NM



Daniel "Danny" Mayfield
Commissioner, District 1
Miguel M. Chavez
Commissioner, District 2
Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4
Liz Stefanics
Commissioner, District 5
Katherine Miller
County Manager

June 13, 2014

Robert and Bernadette Anaya
2253 Ben Lane
Santa Fe, NM 87507

Re: BCC CASE # MIS 13-5061 Robert & Bernadette Anaya

Mr. & Mrs. Anaya:

This letter is to inform you that the Board of County Commissioners (BCC) met and acted on your request for reconsideration of conditions which were imposed by the BCC for Master Plan Zoning approval to allow a towing business on .33 acres. The decision of the BCC was to deny your application, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended until thirty (30) days after recording of the Final Order. The Final Order was recorded on June 13, 2014.

The enclosed order is a final order of the Board of County Commissioners, which, pursuant to Section 39-3-1.1 of the New Mexico Statutes Annotated 1978, you may appeal by filing a timely Notice of Appeal in the appropriate district court. Any such district court appeal must be filed within 30 days of the recording of this Order. The Order was recorded today, which is a matter of public record.

If you have any questions, please do not hesitate to contact this office at 986-6296.

Sincerely,

Jose E. Larranaga
Development Review Team Leader
Fax-(505) 986-6389
joselara@santafecountynm.gov



NB304

English Customer Service USPS Mobile

Register / Sign In



Search USPS.com or Track Packages

Sub

Quick Tools

Ship a Package

Send Mail

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Have questions? We're here to help.

Tracking Number: 7013060000186614937

Product & Tracking Information

Postal Product:

Features:

Certified Mail™

Available Actions

Text Updates

Email Updates

DATE & TIME

STATUS & ITEM

LOCATION

June 17, 2014, 2:11 pm

Notice Left (No Authorized Recipient Available)

SANTA FE, NM 87507

We attempted to deliver your item at 2:11 pm on June 17, 2014 in SANTA FE, NM 87507 and a notice was left because an authorized recipient was not available. Information, if available, is updated periodically throughout the day. Please check again later.

June 17, 2014, 10:43 am

Out for Delivery

SANTA FE, NM 87505

June 17, 2014, 10:30 am

Sorting Complete

SANTA FE, NM 87505

June 17, 2014, 5:20 am

Arrival at Unit

SANTA FE, NM 87505

Track Another Package

What's your tracking (or receipt) number?

Track It

LEGAL

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Inspector General
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NB3-115

SOMMER, KARNES & ASSOCIATES, LLP

Mailing Address
Post Office Box 2476
Santa Fe, New Mexico 87504-2476

Street Address
200 West Marcy Street, Suite 139
Santa Fe, New Mexico 87501

Telephone: (505) 989-3800
Facsimile: (505) 982-1745

Karl H. Sommer, Attorney at Law
khs@sommer-assoc.com
Joseph M. Karnes, Attorney at Law
jmk@sommer-assoc.com

Mychal L. Delgado, Certified Paralegal
mld@sommer-assoc.com

James R. Hawley, Attorney at Law
jrh@sommer-assoc.com
Of Counsel
Licensed in New Mexico and California

130X
August 8, 2014

Via Hand Delivery

Jose Larranaga
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Application for Master Plan, Preliminary and Final Development Plan Approval
2252 Ben Lane
Re: BCC Case # MIS 13-5061

Dear Mr. Larranaga:

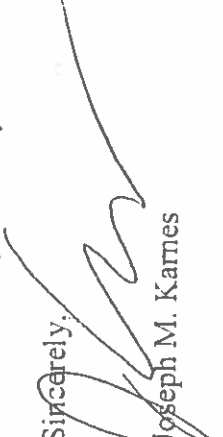
On behalf of property owners Robert and Bernadette Anaya, enclosed is the above-referenced application and the required plans.

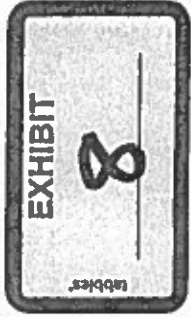
Per your attached letter, dated June 13, 2014, the Anayas were to submit the application within 30 days following the recording of the Order. As documented by the attached USPS information, your letter was mailed on June 16, 2013 but was not delivered until July 18, 2014 and the Anayas did not receive notice until that time.

The Anayas have acted diligently and are submitting this application at their soonest opportunity. We have been advised of the Department's position that expiration of the 30 day timeframe voids the BCC approval. However, the Order contains no such condition, and we are not aware of any Code provision to that effect. The Anayas request that the County process their application and thereby avoid violating their due process rights.

Please let me know how the application will be processed. Likewise, if the Department refuses to process the application, please inform me in writing of that decision and the basis therefore.

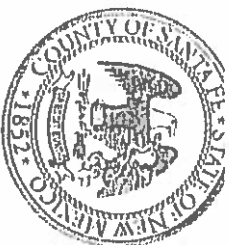
Sincerely,


Joseph M. Karnes



130X-016

Daniel "Danny" Mayfield
Commissioner, District 1
Miguel M. Chavez
Commissioner, District 2
Robert A. Anaya
Commissioner, District 3



Kathy Holan
Commissioner, District 4
Liz Stefanics
Commissioner, District 5
Katherine Miller
County Manager

November 13, 2014

Joseph Karnes
Sommer Karnes & Associates LLP
200 W. Marcy Street, #133
Santa Fe, NM 87501

Re: Robert and Bernadette Anaya, Master Plan and Preliminary and Final Development Plan

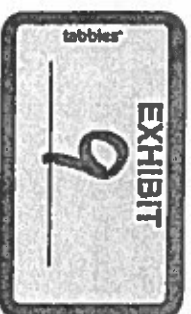
Dear Mr. Karnes,

I am writing to you in your capacity as agent and counsel for Robert and Bernadette Anaya. On August 13, 2014, you hand delivered to the Land Use Department of Santa Fe County, on behalf of Mr. and Mrs. Anaya, an application consisting of the following:

- a. A development permit application;
- b. A letter requesting Master Plan, Preliminary and Final Development Plan approval;
- c. Documents from the U.S. Post Office;
- d. A deed to the subject property;
- e. A survey plat; and
- f. A plan set titled "Anaya Property Master/Preliminary/Final Development Plan Set."

Thereafter, Mr. Sommer advised that he would provide additional information supportive of accepting the submission after the expiration of the deadline for submission of the Preliminary and Final Development Plan imposed by the Board of County Commissioners (BCC) in their order pertaining to Master Plan Zoning. Mr. Sommer has not yet provided the additional information supportive of Applicant's position. The Santa Fe County land use staff has now fully evaluated your submission.

The submission of the Robert & Bernadette Anaya Master Plan, Preliminary and Final Development Plan is rejected as untimely and not constituting a complete application.



NBB-117

On June 11, 2013, the BCC granted Robert and Bernadette Anaya, Master Plan Zoning approval for a commercial towing business with conditions (Exhibit A).

On September 26, 2013, the Applicants filed an application seeking relief from the following conditions of approval of the Master Plan Zoning:

- a. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order;
- b. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;
- c. The implementation of a landscape buffer on the east side of the site alongside the platted easement;
- d. A listing of personal vehicles that will be stored on the 0.33 acres.

On March 11, 2014, the BCC held a public hearing on the Application and then deliberated over the matter in closed executive session on March 25, 2014 and again on May 13, 2014. On June 11, 2014, at a properly noticed public hearing, the BCC approved a Final Order which allowed an extension of the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee, to thirty days after recording the Final Order. All other requests to reconsider conditions of approval were denied (Exhibit B). The approval of the Master Plan was conditioned on submittal of the Preliminary and Final Development Plan to the County Development Review Committee within thirty days of the recordation of the Final Order. The Final Order was recorded on June 13, 2014. The Preliminary and Final Development Plan were submitted approximately twenty-nine days after the deadline for their submission, or approximately fifty-nine days after the Final Order was recorded.

Your clients failed to timely appeal the BCC order imposing a deadline for submission of the Preliminary and Final Development Plan as a condition precedent to Master Plan approval. A certified letter (Exhibit C), along with the Final Order (Exhibit B) was mailed to your clients on June 16, 2014, a letter your clients did not timely retrieve. The failure of your clients to retrieve the order sent to them does not serve to extend the deadline for submission of the Preliminary and Final Development Plan, which deadline was triggered by the recording of the Order in the Office of the County Clerk. In light of the untimely filing of the Master Plan, Preliminary and Final Development Plan, no master plan zoning is in place which would form the basis for the submission of a preliminary and final development plan. Having failed to meet a condition precedent to approval of the Master Plan, staff has no authority to accept the Master Plan, Preliminary and Final Development Plan for processing.

In addition to the failure to meet a condition of approval of the Master Plan, the plan set submitted on August 13, 2014 is deficient. The plan set

submitted is identical to the original submittal of February 7, 2013, which ultimately did not meet the conditions imposed by the Board of County Commissioners. The submittal is deficient in the following ways:

- a. The proposed Master Plan, Preliminary and Final Development Plan drawings do not illustrate the easement required to create the 28 foot inside radius, at the intersection of Agua Fria and Ben Lane, which is required by the County Fire Marshal;
- b. The proposed plan set illustrates 8 parking spaces for trucks, yet the condition of approval of the BCC was to limit the Tow Trucks to 5 (three small tow trucks and two large tow trucks);
- c. A Master Plan Report and Development Plan Report was not submitted as per Article V, Section 5.2.2 Master Plan Submittals and Article V, Section 7.2.1 Final Development Plan Submittals;
- d. A survey to create a .33 acre parcel to be zoned as a Special Use, under the Village of Agua Fria Zoning District Ordinance Use Table, was not submitted.

In light of the aforementioned deficiencies in the materials submitted, staff would have rejected the submittal even if it had been received timely. No further action will be taken on this matter.

Sincerely,



Penny Ellis-Green
Growth Management Director

SOMMER, KARNES & ASSOCIATES, LLP

Mailing Address
Post Office Box 2476
Santa Fe, New Mexico 87504-2476

Street Address
200 West Marcy Street, Suite 139
Santa Fe, New Mexico 87501

Telephone:(505) 989.3800
Facsimile:(505)982.1745

Karl H. Sommer, Attorney at Law
khs@sommer-assoc.com
Joseph M. Karnes, Attorney at Law
jmk@sommer-assoc.com

Mychal L. Delgado, Certified Paralegal
mld@somnier-assoc.com

James R. Hawley, Attorney at Law
jrh@somnier-assoc.com
Of Counsel
Licensed in New Mexico and California

November 17, 2014

Jose Larranaga
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Appeal of Land Use Administrator Decision
Re: BCC Case # MIS 13-5061

Dear Mr. Larranaga:

On behalf of property owners Robert and Bernadette Anaya, by this letter and the attached application, the Anayas appeal the decision issued by Land Use Administrator Penny Ellis-Green rejecting as untimely the Anaya's August 13, 2014 submittal for Master Plan, Preliminary and Final Development Plan approval (the "Application").

The basis for the Appeal is that the underlying Order upon which the Anayas submitted their Application extended a deadline for filing the Application, but the Anayas did not receive notice of the Order's adoption until after the 30 days had passed. Furthermore, the Order did not address ramifications of failure to submit the Application within the identified timeframe and the Land Use Administrator's refusal to accept the Application is arbitrary and capricious and violates that Anaya's rights to due process.

Also, as expressed to County Counsel Rachel Brown and contrary to the representations of Ms. Green's letter, the County has allowed for property owners to continue pursuing approvals after BCC-imposed deadlines have passed. For example, in the case of Minnie Walsh (Case # V-13-5190), in 2006 the BCC issued a temporary permit allowing a second dwelling unit for a period of 2 years and required the property owner to apply for any extension. The BCC ordered that "failure to comply with any of these conditions shall result in administrative revocation of the permit." The property owner failed to apply for extension for the following 7+ years. Instead of revoking the permit, the Land Use Administrator accepted an application from the property owner for variances to allow for the second unit to become permanent.

In the Walsh case, County failed to enforce a time deadline with specific ramifications stated in the BCC order. In contrast, through no fault of their own, the Anayas did not receive notice of the Order until after the deadline passed and then acted diligently to prepared and submit the Application. Moreover, the Order did not express any ramifications if the deadline was not met.



NB3-12C

SOMMER, KARNES & ASSOCIATES, LLP

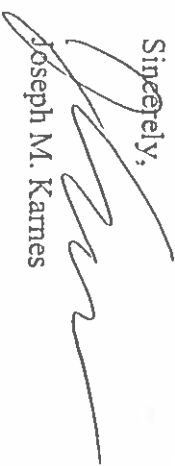
Santa Fe County Growth Management Department

November 17, 2014

Page 2 of 2

The Anayas request that the Land Use Administrator's decision be vacated and the Application be processed in the normal course.

Sincerely,



Joseph M. Karnes

NBB-121

for compliance with the requirements of the Code, and shall make and file a report to the County Development Review Committee evaluating the application and recommending that the County Development Review Committee approve, disapprove, or approve the application with modifications and/or conditions or recommending that the County Development Review Committee recommend the same to the Board depending on which body has final authority pursuant to Section 2.3.2a.

2.3.2b The Code Administrator may hold an informal conference with the applicant and any interested person at any time prior to the making of his recommendation. The Code Administrator shall give at least three (3) working days' notice, either orally or in writing, to the applicant or any interested person who has requested in writing that he receive notice of any informal conference held under this Subsection b.

2.3.2c At least twenty one (21) calendar days prior to any public meeting at which an application will be heard, the applicant shall post notice of the filing of the application prominently on the land, building, or other structure which is the subject of the application in such a way as to give reasonable notice to persons interested in the application and shall provide written verification of the posting of the notice to the Code Administrator.

2.3.2d For development other than subdivisions under the New Mexico Subdivision Act (which shall comply with the public agency review process as set forth in Article V, Section 5.3.3d.), the Code Administrator may refer an application to an appropriate agency or official of the State of New Mexico for an opinion concerning whether the application would be disapproved or approved with conditions or modifications. Unless otherwise required by law, the opinion of the state agency or official shall be advisory. The Code Administrator may delay the making and filing of his recommendation for up to sixty (60) calendar days to await the opinion if he believes that such a delay is in the public interest.

2.3.2e The County Development Review Committee has final approval authority on preliminary and final development plans and on appeals of the Code Administrator's decisions and has recommendation authority on variances, preliminary and final plats, and all master plans, including zoning, for which the Board shall have final approval authority. Plats for Type V subdivisions containing six (6) or more parcels go directly to the Board for review and approval, in accordance with Article V, Section 5.5.4b.

2.3.4 Appeals

2.3.4a Filing an Appeal
All appeals under the Code shall be filed in writing with the Code Administrator.

2.3.4b Appeal of Code Administrator Decision under Section 2.3.1 to the County Development Review Committee
i. Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County

EXHIBIT

11

Development Review Committee shall make and file its decision approving or disapproving the application or approving the application with conditions or modifications.

- ii. A decision of the County Development Review Committee on an appeal shall become final thirty (30) calendar days after the decision is filed, unless within that month an appeal of the decision has been filed by an interested person including the Code Administrator, pursuant to Section 2.3.4c of this Article or the Board on its own initiative has decided to review the decision.

2.3.4.c Appeal of Development Review Committee Decisions to the Board

- i. Any person aggrieved by a decision of a Development Review Committee may file an appeal in writing to the Code Administrator within thirty (30) calendar days of the date of the decision of the Development Review Committee. The Board shall hear the appeal within sixty (60) calendar days after the date the appeal is filed. The Board shall timely make and file its decision approving or disapproving the application or approving the application with conditions or modifications.
- ii. The decision of the Board shall become final on the date when the decision is filed.

2.4 Notice and Conduct of Public Hearing

2.4.1 Notice by County

Notice of a public hearing to be held by a Development Review Committee or the Board, shall be given as provided by resolution of the Board and as otherwise required by law. Copies of the public notice policies shall be posted in the Code Administrator's office. Public hearings shall be conducted as provided by policies established by the body holding the hearing or as required by law. All interested persons shall be allowed a reasonable opportunity to be heard at a public hearing held under the Code.

2.4.2 Notice by Applicant

- 2.4.2a For all zoning cases, master plans, development plans, variances, preliminary and final subdivision plans, Type V subdivisions containing six (6) or more parcels and appeals of these matters, the following public notice requirements shall be completed by the applicant at least twenty one (21) calendar days prior to the public meeting:
 - i. A notice shall be published on the legal section of the daily newspaper which covers the area in which the project is located;
 - ii. Certified letters, prepared by the Code Administrator, shall be mailed return receipt requested to all property owners within one hundred (100) feet (excluding right-of-way) of the subject property;
 - iii. The subject property shall be posted, in the manner outlined in Section 2.3.2c of this Article II.

- 2.4.2b For all summary review subdivisions containing five (5) or fewer parcels, Sections 2.4.2a.ii. and iii. Shall be completed by the applicant at least fifteen (15) calendar days prior to the administrative decision.

History: Section 2.4 was amended by Ordinance 1996-8 to include notice requirements for most projects.

NB13-123

F C C L E R K R E C O R D E D 1 1 / 0 6 / 2 0 0 8

* QUITCLAIM DEED

The Estate of STELLA A. SANDOVAL, Deceased, for good and valuable consideration, QUITCLAIMS to BERNADETTE J. ANAYA, a married woman dealing in her sole and separate property, whose address is 2253 Ben Lane, Santa Fe, New Mexico, 87507, the Santa Fe County, New Mexico, real estate described in Exhibit "A" (said Exhibit "A" is attached hereto and incorporated herein for all purposes),

TOGETHER WITH a perpetual and non-exclusive right in and to the 30' Access and Utility Easement shown on the plat of survey recorded at Plat Book 688, Page 025, in the records of Santa Fe County New Mexico, and,

SUBJECT TO Reservations, Restrictions, Easements of record, and taxes for the year 2007 and subsequent years.

WITNESS OUR HANDS AND SEALS this 5th day of November, 2008.

Estate of STELLA A. SANDOVAL, Deceased

* This deed is being recorded to correct a clerical error (i.e., the proper spelling of the name "Ortiz") in the *Quitclaim Deed* recorded as Instrument # 1542538, in the records of Santa Fe County, New Mexico.

By: Leonard C de Yaca
Co-Personal Representative
By: Ester A. Ortiz
Co-Personal Representative

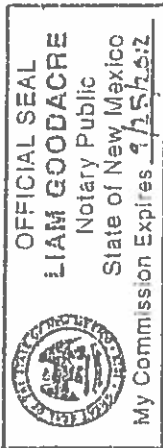


NBB-125

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) ss.

The foregoing instrument was acknowledged before me this 5th day of November, 2008, by Leonard C de Vaca and Ester A. Ortiz, the Co-Personal Representatives of the Estate of STELLA A. SANDOVAL, Deceased, for and on behalf of said Estate.



Liam Goodacre
(Notary's Signature)
LIAM GOODACRE
(Notary's Printed Name)

Notary Public in and for the
State of New Mexico

My Commission Expires: 9/25/2012

NB13-126

Exhibit "A"

Tract 4, as shown on the plat of survey entitled "Lot Line Adjustment for Estate of Stella Sandoval, et. al. ... in Ben Subdivision Within S.H.C. 1182, P2, Section 31, Township 17 North, Range 9 East, N.M.P.M., Santa Fe County, New Mexico", prepared by A-Z Surveying Inc. (Morris A. Apodaca, P.L.S. 5300), on June 02, 2008 (July 08, 2008), and recorded on August 19, 2008 in Plat Book 688, Page 025, in the records of Santa Fe County, New Mexico.

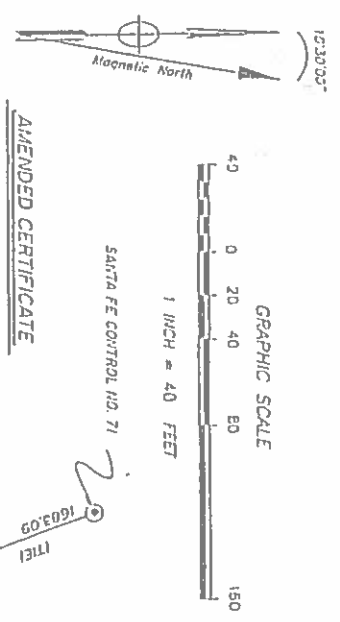
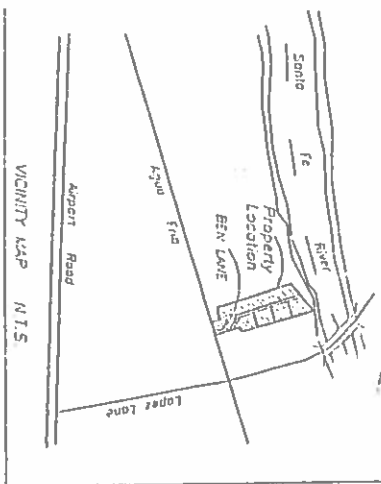
COUNTY OF SANTA FE) QUITCLAIM DEED
STATE OF NEW MEXICO) ss PAGES: 3
: Hereby Certify That This Instrument Was Filed for
Record On The 6TH Day Of November, A.D., 2008 at 12:17
and Was Duly Recorded as Instrument # 1543429
if The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy Santa Fe County Clerk, Santa Fe, NM



FC CLERK RECORDED 11/06/2008

NBB-127



AMENDED CERTIFICATE

THIS PLAT HAS BEEN AMENDED TO SHOW THE TO SANTA FE CONTROL NO. 71.

AMENDED AUGUST 19, 08
CHRIS A. ARDACA, P.L.S. 3300

- LEGEND
- MARKERS SET THIS SURVEY 1/2" REAR WITH CAP 5300
 - MARKERS FOUND USED AND NOTED THIS SURVEY
 - U.S.C.O. BRASS CAP
 - POWER POLE
 - FENCE
 - CONCRETE AREA
 - OVERHEAD UTILITY LINE

OWNERS CONSENT AND AFFIDAVIT

THE UNDERSIGNED OWNERS DO HEREBY ATTEST THAT THE LOT LINE ADJUSTMENT SHOWN HEREON IS WITH THEIR FREE CONSENT AND IN ACCORDANCE WITH THEIR WISHES AND DESIRES AND DO FURTHER UPDATE ANY EASEMENTS PRIVATE PUBLIC TO THE APPROPRIATE UTILITY COMPANY OR USER, THE PROPERTY LIES WITHIN THE PLANNING AND PLANNING JURISDICTION OF THE CITY AND COUNTY OF SANTA FE, NEW MEXICO.

ESTATE OF STELLA SANDOVAL, LEONARD C DE VACA AND ESTHER ORTIZ ADMINISTRATORS
LEONARD C DE VACA
ESTHER ORTIZ
DATE 6-2-08

LEONARD C DE VACA
DATE 6-2-08
ESTHER ORTIZ
DATE 6-2-08
LEONARD C DE VACA
DATE 6-2-08
ESTHER ORTIZ
DATE 6-2-08
LEONARD C DE VACA
DATE 6-2-08
ESTHER ORTIZ
DATE 6-2-08

STATE OF NEW MEXICO
COUNTY OF SANTA FE

ON THIS 2ND DAY OF JUNE, 2008, THE FOREGOING AFFIDAVIT WAS ACKNOWLEDGED BEFORE ME BY THE FOREGOING WHOSE NAME APPEARS THE THE ABOVE.

NOTARY PUBLIC
DATE 6-2-08



GENERAL NOTES

1. SURVEY REFERENCE OF PLAT OF SURVEY ENTITLED "BEN SUBDIVISION" PREPARED BY GEORGE RIVERA ALVARO, JR. 3149 ON OCTOBER 1981 RECORDED IN PLAT BOOK 124 PAGE 603 IN THE RECORDS OF SANTA FE COUNTY CLERK.
2. SURVEY REFERENCE OF PLAT OF SURVEY ENTITLED "LOT LINE ADJUSTMENT LEONARD C DE VACA AND STELLA SANDOVAL" PREPARED BY CRYSTAL MARTINEZ N.E.P.S. No. 3995 JULY 14, 1993 RECORDED IN PLAT BOOK 250 PAGE 042 IN THE RECORDS OF SANTA FE COUNTY CLERK.
3. BEARINGS ARE BASED ON GRID NORTH (NAD83) FROM FIELD OBSERVATIONS BY MEANS OF P.T.K. CLOSURE POSITIONING SYSTEM (P.S.). DISTANCES ARE GROUND.
4. PROPERTY LIES WITHIN THE 100' TIE AS SHOWN IN SANTA FE COUNTY PLAT. PLAT BOOK 124 PAGE 603.
5. THIS PROPERTY DOES NOT LIE WITHIN THE 100' TIE AS SHOWN IN SANTA FE COUNTY PLAT. PLAT BOOK 124 PAGE 603.
6. SURVEY REFERENCE OF THE DISTRICT COURT, OF THE COUNTY OF SANTA FE COURT FILE CASE NO. 5778-2224 SIGNED BY DISTRICT COURT CLERK LORENZO GARCIA.

CERTIFICATE

I, LEONARD C DE VACA, ESTHER ORTIZ, LEONARD C DE VACA, AND STELLA SANDOVAL, DO HEREBY CERTIFY THAT ON DECEMBER 17, 2007, I CONDUCTED AND AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT, THE BEST FOR SURVEYING IN THE STATE OF NEW MEXICO.



BUILDING PERMIT CONDITION

BUILDING PERMITS FOR NEW RESIDENTIAL CONSTRUCTION SHALL NOT BE ISSUED UNTIL PROPERTY HAS BEEN COMPLETED ALONG BEN LANE.

SANTA FE COUNTY UTILITY DIVISION
DATE 1-8-08

1531-659

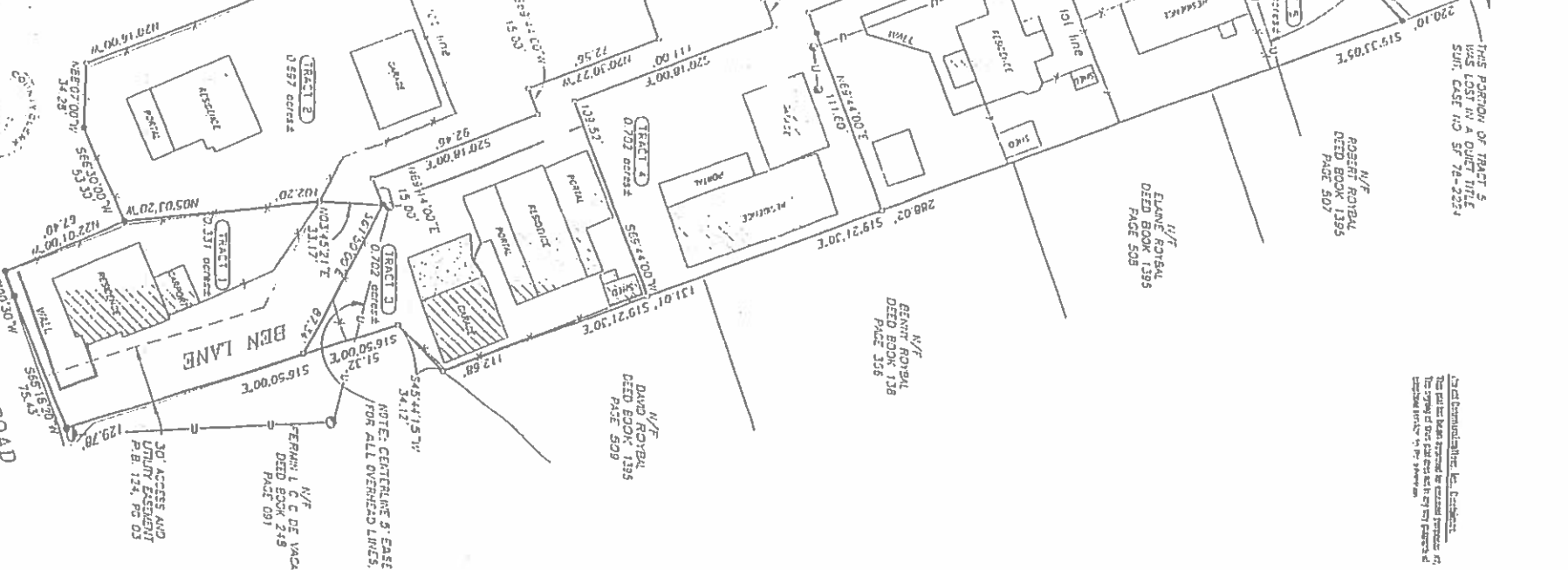


STATE OF NEW MEXICO
COUNTY OF SANTA FE
INST # 1531611

1. HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD ON THE 9th DAY OF AUGUST, 2008, AT 11:02 O'CLOCK AM OF THE RECORDS OF SANTA FE COUNTY, NEW MEXICO.

DEPUTY SANTA FE COUNTY CLERK OFFICE, STATE OF NEW MEXICO

CHRIS A. ARDACA, P.L.S. 3300



UNITIES
DATE 6-5-08
DATE 6-18-2008
DATE 6-4-08

SANTA FE COUNTY APPROVALS

NOTE AND CONDITIONS
DATE 7-1-08
DATE 6-2-08

CERTIFICATE OF RECORDING NO. 08-3075

1. THE PURPOSE OF THIS SURVEY IS TO SHOW THE LOCATION OF THE LOT LINE ADJUSTMENT SHOWN HEREON IN THE RECORDS OF THE COUNTY PUBLIC WORKS DEPARTMENT.
2. THE LAND SHOWN HEREON IS WITHIN THE PLANNING AND PLANNING JURISDICTION OF THE CITY AND COUNTY OF SANTA FE.
3. SANTA FE COUNTY'S APPROVAL OF THIS SURVEY PLAT DOES NOT INCLUDE THE CONSTRUCTION OF PRIVATE EASEMENTS OR RIGHTS AS SHOWN HEREON TO THE LAND SHOWN HEREON. THE CONSTRUCTION OF PRIVATE EASEMENTS OR RIGHTS AS SHOWN HEREON TO THE LAND SHOWN HEREON IS THE RESPONSIBILITY OF THE LANDOWNER.
4. THE LAND SHOWN HEREON IS SUBJECT TO THE PLANNING AND PLANNING JURISDICTION OF THE CITY AND COUNTY OF SANTA FE.
5. THE LAND SHOWN HEREON IS SUBJECT TO THE PLANNING AND PLANNING JURISDICTION OF THE CITY AND COUNTY OF SANTA FE.
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14. THE LAND SHOWN HEREON IS SUBJECT TO THE PLANNING AND PLANNING JURISDICTION OF THE CITY AND COUNTY OF SANTA FE.
15. THE LAND SHOWN HEREON IS SUBJECT TO THE PLANNING AND PLANNING JURISDICTION OF THE CITY AND COUNTY OF SANTA FE.

SPECIAL BUILDING PERMIT CONDITIONS

DEVELOPMENT PERMITS FOR BUILDING CONSTRUCTION WILL NOT BE ISSUED UNTIL REQUIRED IMPROVEMENTS FOR ROADS, FIRE PROTECTION AND DRAINAGE ARE COMPLETED AS APPROVED BY THE CITY.

LOT	ADDRESS	U.P.C. CODE
TRACT 1	2160 BEN LN.	1-049-087-345-053
TRACT 2	2160 BEN LN.	NO INFO FOUND
TRACT 3	2250 BEN LN.	1-049-087-350-075
TRACT 4	2250 BEN LN.	1-049-087-350-075
TRACT 5	2250 BEN LN.	1-049-087-350-075

PURPOSE: THIS PLAT IS TO AMEND EXISTING TRACT BOUNDARIES

LOT LINE ADJUSTMENT FOR



A - Z SURVEYING
LEONARD C DE VACA, ESTHER ORTIZ, LEONARD C DE VACA, AND STELLA SANDOVAL
WITHIN S.H.C. 1182, P2 SECTION 31
TOWNSHIP 17 NORTH RANGE 9 EAST, N.M.P.M.
SANTA FE COUNTY, NEW MEXICO
5639 AGUA FRIA ROAD, SUITE 200
SANTA FE, NM 87507
TELEPHONE (505) 471-1356
SCALE 1"=50'
CHECKED BY
DATE 2/08
SYNOPSIS NO
LOT 1-55

September 21, 2015

County of Santa Fe
Land Use Department – Attention Jose Larranaga
200 Grant Avenue
Santa Fe, NM 87501

Re: Letter of Agent Authorization – Anaya Appeal
BCC CASE # APP 15-5250 Robert and Bernadette Anaya Appeal

Dear Staff:

This letter shall serve to grant my authorization for Sommer Karnes & Associates, LLP (Karl Sommer and Joseph Karnes) to act as my agents for purposes of my appeal of the CDRC's decision concerning the towing business operated on the property in which I hold an ownership interest.

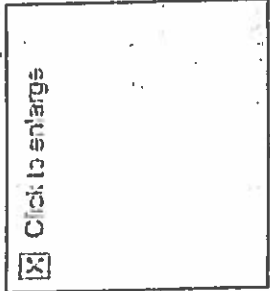
Sommer Karnes & Associates, LLP may be reached at 505-989-3800 or by email at khs@sommer-assoc.com.

Sincerely,

Robert Anaya



NB13-129



Santa Fe County Fire
Department
Station: 61
Shifts Or Platoon: C Shift

Location: 2253 Ben Lane LN Agua Fria NM 87501 Lopez and Agua Fria	Incident Type: 111 - Building fire
Lat/Long: N 35° 39' 16.25" W 106° 1' 25.81"	FDID: 49004 Incident #: 2015-575 Exposure ID: 10816011 Exposure #: 0 Incident Date: 01/29/2015 Dispatch Run #: 0215000584
Zone: WEST - Western Region Location Type: 1 - Street address Cross Street, Directions or National Grid: Lopez and Agua Fria	
Report Completed by: AD- Martinez , Frances	ID: ID: Date: 02/03/2015
Report Reviewed by: AD- Martinez , Frances	ID: ID: Date: 02/03/2015
Report Printed by: AD- Montoya, Elena	ID: 42 Date: 2/4/2015 Time: 10:40

Structure Type: Enclosed building		Property Use: 419 - 1 or 2 family dwelling	
Automatic Extinguishment System Present: <input type="checkbox"/>		Detectors Present: <input checked="" type="checkbox"/> Cause of Ignition: Cause under investigation	
Aid Given or Received: None		Primary action taken: 10 - Fire control or extinguishment, other	
Additional actions: 12 - Salvage & overhaul , 80 - Information, investigation & enforcement, other			
Losses		Pre-Incident Values	
Property:	0	Civilian Injuries:	0
Contents:	0	Civilian Fatalities:	0
Total:	0	Total Casualties:	0
Total # of apparatus on call:		9	Total # of personnel on call: 15

NARRATIVE
Dispatched To above address Re: "Structure Fire." Dispatch stated, "Fire is in the laundry room, and all residents are evacuated." Engine-1 and Med 61 arrived on scene. Double wide mobile home approximately 1800 to 2000 square feet with heavy smoke and visible flames showing on the bravo charlie corner. Incident command was established and given to County 114. Confirmation was made with homeowner Robert Anaya that all residents were evacuated and accounted for. Two 1 inch and 3/4 lines pulled and taken to the Alpha side of the structure. Offensive attack was initiated and announced on County main. Entry was made from the front door with a left hand search/attack. Heavy smoke and heat throughout interior of building. Visibility was minimal. Interior attack consisted of Lieutenant Patricio Romero and Firefighter Justin Armijo. Rapid Intervention Crew consisted of Firefighters Steve Lurneborg, Rachael Martinez, and Garret Philips. Engineer was Firefighter Marcos Archuleta. Upon interior attack, fire was found in the second living room rolling over our head extending into kitchen. Fire extension was stopped and interior attack continued to laundry room. Heavy fire/flames found in laundry room. Fire had burned through the roof and was self venting above laundry room. Extension was stopped, fire was knocked down and "overhaul/salvage" phase was initiated. Numerous hotspots found with thermal imaging camera throughout roof extending from laundry room to kitchen. Second 1 inch and 3/4 line was extended to bravo charlie corner and entry was made from laundry room door located on bravo side. Personnel arrived and assisted with salvage and overhaul. Incident command was transferred to County Battalion Chief, Bobby Montoya. Salvage and overhaul phase continued with fresh personnel. Roof was exposed until fire was out. Heavy fire and smoke damage noted throughout residence. Shift change occurred and command was transferred to Battalion Chief Karl Ehl. Initial attack crew was released from scene. Salvage and overhaul continued until all hot spots were extinguished.
AFFD / STRUCTURE FIRE ENTERING INFORMATION ON BEHALF OF AFFD MEMBER ALAN GONZALES) ARRIVED ON SCENE ON AGUA FRIA TANKER 1 AND HELPED WITH WATER COMMAND. PROVIDED MANPOWER ON SCENE.

APPARATUS	Unit	Unit
	COBC	AFFD
Type:	Chief officer	Engine



NBB-130

Enroute	01/29/2015 05:25:00
Arrived	01/29/2015 05:30:00
Cancelled	01/29/2015 05:30:00
Cleared Scene	01/29/2015 08:50:00
In Quarters	01/29/2015 08:50:00
In Service	01/29/2015 08:50:00
Number Of People not on apparatus: 0	

FIRE			
Acres Burned	None or Less Than One	Acres Burn From Wildland Form	False
Area Of Fire Origin	Laundry area, wash house (laundry)	Heat Source	Undetermined
Item First Ignited	Undetermined	Fire Is Confined To Object Of Origin	Undetermined
Type Of Material	Undetermined	Cause Of Ignition	Cause under investigation
Factor Contributing To Ignition	Electrical failure, malfunction, other		
Human Factors Contributing	None		

STRUCTURE FIRE			
Structure Type	Enclosed building	Building Status	In normal use
# Of Stories At Above Grade	1	# Of Stories Below Grade	0
Square Feet		Length	32
Width	80	Floor Of Origin	1
Fire Spread	Confined to building of origin		
Minor Damage	1	Significant Damage	0
Heavy Damage	0	Extreme Damage	0
Item Contributing Most To Spread	Undetermined	Type Of Material Contributing Most To Spread	Undetermined
Presence Of Detectors	Present	Type Of Detection System	Smoke Detector
Detector Power Supply	Hardwire with battery backup	Detector Operation	Detector operated
Detector Effectiveness	Detector alerted occupants, occupants responded	Detector Failure Reason	

ARSON			
Agency Name	Agency Address	Agency Phone	
Case Status	Availability Of Material First Ignited		
Investigation Inactive			

CUSTOM FIELDS FORM			
County Jail Transport?			N/A
Is all of the billing information completed?			N/A

PERSONNEL ON CALL			
Name	Personnel Rank	Apparatus	
AD- Archuleta, Marcos	Firefighter/EMT-P	MED51	
AD- Eni, Karl	Battalion Chief EMT-1	CO3C	
AD- Gabaldon, Robert	Firefighter/EMT-1	LCE1	
AD- Hill, Clyde	Emergency Vehicle Tech	ADR1	

NBR-131

Buster "Granville" Patty

From: Charles Velarde
Sent: Thursday, March 05, 2015 9:11 AM
To: Buster "Granville" Patty
Subject: Structure Fire - Ben Lane

Buster, I responded to the structure fire on Ben Ln and when I arrived there were several fire apparatus parked along the roadway and 1 tow truck (white Ford F450/550) which was parked to the left in a driveway with the light bar (amber) on and the trucks engine running.

I could not find anyone from Anaya's to move it, so I actually moved the truck myself across the street into a nearby residence where I felt that it would not hamper fire operations or the occupants access or egress.

Other tow trucks that I did see were parked on the north side of the property in a vacant lot, this lot is where a gate was opened up for access to a side street by Robert Anaya Jr.

Charlie Velarde
Assistant Fire Chief
Operations / Training Division
Santa Fe County Fire Department



Office 505-992-3079
Cell 505-490-1410
cvelarde@santafecountynm.gov

NBB-12

Buster "Granville" Patty

From: Bobby Montoya
Int: Tuesday, February 24, 2015 1:36 PM
To: Buster "Granville" Patty
Subject: Anaya Fire

Good Afernoon,

You had requested information regarding what was seen the morning of the Anaya fire. As I recall, there were no vehicles parked in front of the residence upon my arrival. There was plenty of room for the apparatus that was in place. I do not know if any vehicles were moved prior to The arrival of Agua Fria Engine 1 or Med 61...Thanks

Battalion Chief Bobby Montoya
Santa Fe County Fire Dept.
Work Cell# 505-690-9818

NBB-133

Upon motion by Member Martin and second by Member Gray the agenda was unanimously approved 6-0 as published.

V. APPROVAL OF MINUTES: April 16, 2015

Member Martin moved to approve the minutes as published. Her motion was seconded by Member Gray and passed without opposition.

VI NEW BUSINESS

A. CDRC CASE # DP 09-5471 Aces Towing – TABLED

B. CDRC CASE # APP 13-5062 Robert and Bernadette Anaya Appeal:
Robert and Bernadette Anaya, Applicants, Joseph Karnes (Sommer, Karnes & Associates, LLP), Agent, are appealing the Land Use Administrator's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as it was deemed untimely. The property is located at 2253 Ben Lane, within Sections 31, Township 17 North, Range 9 East, (Commission District 2)

Jose Larrañaga, Development Review Team Leader, read the case caption and staff report as follows:

"The following is an outline in chronological order of past events leading up to the Applicants' request: On November 13, 2012, the Board of County Commissioners granted a request made by the Applicants for a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the Board of County Commissioners. The approval of the variance was conditioned on the Applicants presenting a Master Plan to the BCC, within eight months of the November 13, 2012 hearing. The Applicants submitted an Application for Master Plan, Preliminary and Final Development Plan on February 8, 2013.

"On April 18, 2013, the County Development Review Committee met and acted on the request by the Applicants for Master Plan Zoning and Preliminary Development Plan approval. Staff recommended Master Plan approval as the request for Preliminary Development Plan approval was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j and Article III, § 4.4. The decision of the CDRC was to recommend approval of the Applicants' request for Master Plan approval and denial of the Applicants' request for Preliminary Development Plan.

"On June 11, 2013, the BCC granted a request made by the Applicants for Master Plan Zoning to allow a towing business on 0.33 acres. The request was granted subject to the following conditions:



NBB-134

SFC CLERK RECORD 06/22/2015

S F C C L E R K R E C O R D 0 6 / 2 2 / 2 0 1 5

1. The Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;
2. A Preliminary and Final Development Plan shall be submitted within ninety days of issuance of this Order, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
3. The Applicants shall comply with Ordinance No. 2007-2, § 10.Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
4. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;

"On September 26, 2013, the Applicants submitted a request for an extension of time to submit the Preliminary and Final Development Plan, an amendment to the approved Master Plan and for reconsideration of the BCC's August 20, 2013 Final Order. The Applicants submitted a letter of request, a copy of the Master Plan Report, Master Plan drawings, fees, deed and recorded plat;

"On March 11, 2014, the BCC held a public hearing on the request by the Applicants to reconsider the conditions imposed on the Master Plan Zoning approved on June 11, 2013. The BCC then deliberated over the matter in closed executive session on March 25, 2014 and again on May 13, 2014. The conditions that the Applicants requested the BCC to reconsider are:

1. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order.
2. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.
3. The implementation of a landscape buffer on the east side of the site alongside the platted easement.
4. The listing of personal vehicles that will be stored on the site;

"On June 11, 2014, the BCC approved a Final Order which denied the request to reconsider the conditions and which allowed an extension of the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee, to 30 days after recording the order denying the request for reconsideration. All other requests were denied;

"The approval of the extension of the previously imposed deadline was subject to submitting the Preliminary and Final Development Plan to the County Development Review Committee within 30 days of the recordation of the Final Order. The Final Order was recorded on June 13, 2014. The Preliminary and Final Development Plan was not submitted within the 30 days of the recording date. An appeal of the Order was not filed within 30 days of the recording date;

NB13-135

"A copy of the recorded Final Order was mailed to the Applicants on June 16, 2014, via certified mail along with a letter stating the following: This letter is to inform you that the Board of County Commissioners met and acted on your request for reconsideration of conditions which were imposed by the BCC for Master Plan Zoning approval to allow a towing business on .33 acres. The decision of the BCC was to deny your Application, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended 30 days after recording of the Final Order. The Final Order was recorded on June 13, 2014. The enclosed order is a final order of the Board of County Commissioners, which, pursuant to Section 39-3-1.1 of the New Mexico Statutes Annotated 1978, you may appeal by filing a timely Notice of Appeal in the appropriate district court. Any such district court appeal must be filed within 30 days of the recording of this Order. The Order was recorded today, which is a matter of public record.

"On June 17, 2014, the United States Postal Service left notice of the certified letter at the Applicants' mailing address. The Applicants did not contact staff nor did they file an appeal with the District Court during the 30-day period. The Applicants did contact staff after the 30-day deadline and inquired on how to proceed with their Application. Staff advised the Applicants that the deadline for submitting the Preliminary and Final Development Plan and for filing an appeal to District Court had lapsed:

"On August 13, 2014, approximately 29 days after the deadline for their submission, or approximately 59 days after the Final Order was recorded, Joseph Karnes on behalf of the Applicants submitted an Application for Master Plan Zoning, Preliminary and Final Development Plan. The plan set that was submitted was identical to the original submittal, submitted on February 7, 2013, which ultimately did not meet the Code requirements or conditions imposed by the Board of County Commissioners. The submittal was deficient in the following:

- a. The proposed Master Plan, Preliminary and Final Development Plan drawings do not demonstrate the easement required to create the 28-foot inside radius at the intersection of Agua Fria and Ben Lane, which is required by the County Fire Marshal.
- b. The proposed plan set illustrates 8 parking spaces for trucks, where the condition of approval, by the BCC, was to limit the tow trucks to five, three small tow trucks and two large tow trucks.
- c. A Master Plan Report and Development Plan Report was not submitted as per Article V, Section 5.2.2 Master Plan Submittals and Article V, Section 7.2.1 Final Development Plan Submittals.
- d. A survey to create a .33-acre parcel to be zoned as a Special Use, under the Village of Agua Fria Zoning District Ordinance Use Table, was not submitted;

"On November 13, 2014, the Land Use Administrator issued a letter to Mr. Karnes stating the following: The submission of the Robert & Bernadette Anaya

NB3-130

S F C C L E R K R E C O R D 0 6 / 2 2 / 2 0 1 5

Master Plan, Preliminary and Final Development Plan is rejected as untimely and not constituting a complete Application.”

“The Applicants claim that they did not receive notice of the Final Order adopted by the BCC until after the 30 days had passed. They also claim that the Final Order did not address ramifications of failure to submit the Application within the identified timeframe.

“Staff Response: The Applicants failed to appeal in a timely manner, the BCC order imposing a deadline for submission of the Preliminary and Final Development Plan as a condition precedent to Master Plan approval. A certified letter along with the Final Order was mailed to the Applicants, a letter the Applicants did not timely retrieve. The failure of the Applicants to retrieve the order sent to them does not serve to extend the deadline for submission of the Preliminary and Final Development Plan, which deadline was triggered by the recording of the Order in the Office of the County Clerk. In light of the untimely filing of the Master Plan, Preliminary and Final Development Plan, no Master Plan Zoning is in place which would form the basis for the submission of a Preliminary and Final Development Plan. Having failed to meet a condition precedent to approval of the Master Plan, staff has no authority to accept the Master Plan, Preliminary and Final Development Plan for processing. Additionally, the documents presented were not compliant with submittal requirements of the Code.”

Mr. Larrañaga said staff recommends denial of the Applicants’ request to appeal the Land Use Administrator’s decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as the Master Plan, Preliminary and Final Development Plan submittal was deemed untimely and did not constitute a complete Application. Staff solicits the support of the County Development Review Committee to support the Land Use Administrator’s decision which was based on the Final Order and conditions imposed by the BCC.

Member Gonzales asked whether the eight-month period to file a master plan was typical and who authorized that amount of time. Mr. Larrañaga responded the BCC and confirmed that the applicant requested amendments to the conditions and while that was not granted they were given additional time.

Karl Sommer, PO Box 2476, Santa Fe, NM, appeared as counsel for the applicants and mentioned that the applicants’ home was in a recent fire and lacking insurance all of their resources are focused on their living dwelling. The fire has contributed to the tabling of this appeal before the CDRC.

Mr. Sommer said the request before the CDRC is whether or not the Land Use Administrator had the authority to accept the submission out of time and whether or not the master plan zoning, by its own accord, disappeared that legislative action when the 30-days passed.

S F C C L E R K R E C O R D 0 6 / 2 2 / 2 0 1 5

NBIB-137

Mr. Sommer said the history of the Anaya's case is long and has been a struggle for them and while they received final approval they did not receive the final request. Their plans were finalized by engineer Morey Walker. However, the Anayas were unaware of the associated time period within the final order. The Anayas retained Mr. Sommer's law firm subsequent to the lapse in the time period and the plans were immediately submitted.

Mr. Sommer repeated the issue before the CDRC: Did the zoning disappear when the Anaya's failed to file within the time period? What is the effect of the failure to meet the time period? He mentioned that his clients lacked sophistication in regards to property ownership and that explains some of the confusion regarding time frames.

Member Booth asked whether the applicants received the certified letter and Mr. Sommer said it was received after the 30-day time period. He was unaware of whether they received notice of the certified letter.

In response to a question regarding post office notification, Mr. Larrañaga directed the CDRC to USPC tracking document an exhibit within their packet.

Chair Katz said he understood the applicant was given a time in which to file the master plan and failed to do so. As a result, the Land Use Administrator said it's late and did not accept it. He asked whether the denial of the master plan removed the zoning. Mr. Sommer said he understood that the final act of the BCC was to grant approval of a zoning application for a master plan which constitutes zoning for the property. The question is does the zoning go away since they failed to meet the time imposed by the BCC order? Staff declares that the consequence of not meeting the deadline is the zoning is gone and the property is now zoned residential.

Under oath, Georgia and Henry Roybal identified themselves as the original complainants against the Anayas who knocked down their wall in January 2012. Ms. Roybal said she and her husband have been dealing with the Anayas' development plan since that time.

Ms. Roybal said she was puzzled that the Anayas did not receive their certified mail because as a listed PRC business they are required to man the 24/7 towing company office. In fact, she sent herself certified mail to test the post office and found the delivery to be timely and was advised twice of the mail from the post office.

Ms. Roybal said she represents the 10 families affected by the Anayas' business. She said businesses can move more easily than the 10 families it affects. The residents on Ben's Lane are limited in activities because of the tow truck business. She offered to share photographs of the situation.

There were no other speakers and Chair Katz closed the public hearing.

Mr. Larrañaga clarified that the request before the CDRC is to support the Land Use Administrator's decision to deny the applicants' request to appeal the Land Use

S F C C L E R K R E C O R D 0 6 / 2 2 / 2 0 1 5

NBB-130

Administrator's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as per the BCC conditions and the untimely manner of the submittal.

With respect to CDRC Case #A 13-5062, Member Martin moved to deny the applicants' request to appeal the Land Use Administrator's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as it was deemed untimely and did not constitute a complete application. Member Gray seconded and the motion passed by unanimous [6-0] voice vote.

C. CDRC CASE # DP 15-5090 The Legacy at Santa Fe: PinPoint Equities, LLC, Applicant, JenkinsGavin, Agents, request Preliminary and Final Development Plan approval for an Assisted Living Facility on 6.78 ± acres within Phase I-A of Aldea de Santa Fe. The 66,476 square foot facility will contain 84 beds and will be constructed 33 feet 10 inches in height. The property is located at 34 Avenida Frijoles, North of 599, within Section 20, Township 17 North, Range 9 East, (Commission District 2)
[Exhibit 1: Revised Applicant Proposal; Exhibit 2: Jason Gonzales email concerning access road, James & Barbara Talley letter concerning access road; Exhibit 4: Emails to JenkinsGavin supporting the development; Exhibit 5: Applicant slide show, site photos and drawings]

Ms. Lucero advised the CDRC that staff received a revised proposal [Exhibit 1] this morning that relocates and realigns the onsite access road to the project. Staff has not had the opportunity to conduct an analysis and the applicant would need to submit additional information – plans, profiles, on the roadways, road sections, scaled drawings, slope disturbances, etc. – and following Land Use review, the plans would be forwarded to County Public Works and the Fire Marshal.

Ms. Lucero said the revised proposal creates an incomplete submittal that lacks a staff recommendation. She recommended the case be tabled if the applicant wants to use the revised plan.

Agent Jennifer Jenkins said they were prepared to go forward with the original proposal.

Mr. Larrañaga read the case caption and reviewed staff's report as follows:

"The Applicant is requesting Preliminary and Final Development Plan approval for an assisted living facility in conformance with the Aldea de Santa Fe Amended Master Plan and Santa Fe County Ordinance No. 1996-10, the Land Development Code. The Amended Master Plan was approved on February 2005, by the Extraterritorial Zoning Authority. The 6.78-acre site is recognized as an Institutional Use in the Amended Master Plan. The uses allowed, as per the Amended Master Plan, for an Institutional Use are: Educational Institutions; Civic and Religious Organizations. This includes: Museums, School Buildings, School

S F C C L E R K R E C O R D 0 6 / 2 2 / 2 0 1 5

N1313-139

Henry P. Roybal
Commissioner, District 1
Miguel M. Chavez
Commissioner, District 2
Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4
Liz Stefanics
Commissioner, District 5
Katherine Miller
County Manager

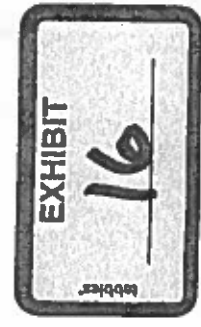
SFC CLERK RECORDED 07/17/2015

CDRC CASE # APP 13-5062
ROBERT AND BERNADETTE ANAYA APPEAL
ROBERT AND BERNADETTE ANAYA, APPLICANTS

ORDER

THIS MATTER came before the County Development Review Committee (CDRC) for hearing on May 21, 2015, on the Application of Robert and Bernadette Anaya (Applicants), appealing the Land Use Administrator's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as it was deemed untimely. The CDRC, having reviewed the Application, supplemental materials, Staff report and having conducted a public hearing on the request, finds that the Application is not well-taken and should be denied and makes the following findings of fact and conclusions of law:

1. This matter commenced as a result of a neighbor's complaint about a towing business operating without proper zoning or a business license in a residential area. The complaint arose as a result of the Applicants causing damage to the neighbor's property with their large tow trucks knocking down a masonry wall between the neighbor's property and the Applicants' property.
2. The Applicants were issued a notice of violation of Ordinance No. 1992-3 (Business Registration and Licensing Ordinance), on February 9, 2012, for operating a business without a County Business Registration.



NB13-14

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3. The Applicants acquired the Property by Quitclaim deed recorded as Instrument # 1543429 in the Santa Fe County Clerk's records on November 6, 2008.
4. The property is located at 2253 Ben Lane, within Sections 31, Township 17 North, Range 9 East in a densely developed neighborhood.
5. On February 12, 2013, the Board of County Commissioners (BCC) conditionally approved Applicants' application for a variance of Ordinance 1996-10, the Santa Fe County Land Development Code (the Code), as amended by Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District, to allow a towing business as a Special Use under Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the BCC. The approval of the variance was conditioned on the Applicants presenting a Master Plan, and Preliminary and Final Development Plan approval to the BCC by July 9, 2013.
6. The Applicants submitted an Application for Master Plan, Preliminary and Final Development Plan on February 8, 2013. On April 18, 2013, the CDRC met and acted on the Application. Staff recommended only approval of the Master Plan because the request for Preliminary Development Plan approval was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j (Development Plan Requirements) and Article III, § 4.4 (Development and Design Standards). The decision of the CDRC was to recommend approval of the Applicants' request for Master Plan approval and denial of the Applicants' request for Preliminary Development Plan.

7. On June 11, 2013, the BCC granted a request made by the Applicants for Master Plan Zoning to conditionally approve operation of a towing business on 0.33 acres \pm . The request was granted subject to the following conditions precedent:

a. The Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;

b. A Preliminary and Final Development Plan shall be submitted within ninety days, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;

c. The Applicants shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards);

d. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;

e. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.

8. On September 26, 2013, the Applicants submitted a request for an extension of time to submit the Preliminary and Final Development Plan, an amendment to the approved Master Plan and for reconsideration of certain conditions contained in the BCC's August 20, 2013 Final Order. The Applicants submitted a letter of request, a copy of the Master Plan Report, Master Plan drawings, fees, deed and recorded plat.

9. On March 11, 2014, the BCC held a public hearing on the request by the Applicants to reconsider the conditions imposed on the Master Plan Zoning approved on June 11, 2013.

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The BCC then deliberated over the matter in closed executive session on March 25, 2014 and again on May 13, 2014. The conditions that the Applicants sought to have removed from the Final Order were b and e of paragraph 7 above, as well as two additional items:

- a. The implementation of a landscape buffer on the east side of the site alongside the platted easement; and
- d. The listing of personal vehicles that will be stored on the site.

10. On June 11, 2014, the BCC, at a properly noticed, televised open meeting, approved a Final Order which denied the request to reconsider the conditions, however allowing an extension of the deadline for submitting a Preliminary and Final Development Plan to the CDRC, to thirty days after recording the order denying the request for reconsideration. ~~AM~~ other requests were denied.

11. The extension of the deadline for submitting the Preliminary and Final Development Plan to the CDRC was only for thirty days after recordation of the final order granting that extension. The Final Order was recorded on June 13, 2014. Applicants failed to submit the Preliminary and Final Development Plan within the thirty day extension period. Applicants also failed to timely submit an appeal of the BCC Order denying the application yet granting an extension of the deadline to submit the Preliminary and Final Development Plan.

12. A copy of the recorded Final Order was mailed to the Applicants on June 16, 2014, via certified mail along with a letter stating the following:

“This letter is to inform you that the Board of County Commissioners met
and acted on your request for reconsideration of conditions which were
imposed by the BCC for Master Plan Zoning approval to allow a towing

S F C C L E R K R E C O R D E D 0 7 / 1 7 / 2 0 1 5

business on .33 acres. The decision of the BCC was to deny your Application, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended thirty (30) days after recording of the Final Order. The Final Order was recorded on June 13, 2014. The enclosed order is a final order of the Board of County Commissioners, which, pursuant to Section 39-3-1.1 of the New Mexico Statutes Annotated 1978, you may appeal by filing a timely Notice of Appeal in the appropriate district court. Any such district court appeal must be filed within 30 days of the recording of this

Order. The Order was recorded today, which is a matter of public record."

13. On June 17, 2014, the United States Postal Service left notice of the certified letter at the Applicants' mailing address. The Applicants did not contact staff nor did they file an appeal with the District Court during the 30 day period. The Applicants did contact staff after the thirty day deadline and inquired on how to proceed with their Application. Staff advised the Applicants that the deadline for submitting the Preliminary and Final Development Plan and for filing an appeal to District Court had lapsed.

14. On August 13, 2014, approximately twenty-nine days after the deadline for their submission, or approximately fifty-nine days after the Final Order was recorded, Counsel for applicants submitted an Application for Master Plan Zoning, Preliminary and Final Development Plan. The plan set that was submitted was identical to the original submittal from February 7, 2013, which had already been determined to fall short of the Code requirements and conditions imposed by the BCC. The submittal had the following deficiencies:

SFC CLERK RECORDED 07/17/2013

NB13-104

S F C C L E R K R E C O R D E D 0 7 / 1 7 / 2 0 1 5

- a. The proposed Master Plan, Preliminary and Final Development Plan drawings do not demonstrate the easement required to create the 28 foot inside radius, at the intersection of Agua Fria and Ben Lane, which is required by the County Fire Marshal;
 - b. The proposed plan set illustrates 8 parking spaces for trucks, where the condition of approval by the BCC was to limit the tow trucks to 5 (three small tow trucks and two large tow trucks);
 - c. A Master Plan Report and Development Plan Report were not submitted as per Article V, Section 5.2.2 Master Plan Submittals and Article V, Section 7.2.1 Final Development Plan Submittals;
 - d. A survey to create a .33 acre parcel to be zoned as a Special Use, under the Village of Agua Fria Zoning District Ordinance Use Table, was not submitted.
15. On November 13, 2014, the Land Use Administrator issued a letter to Applicants' attorney stating the following: "The submission of the Robert & Bernadette Anaya Master Plan, Preliminary and Final Development Plan is rejected as untimely and not constituting a complete Application."
16. Pursuant to Article II, § 2.3.4b of the Code:
- "2.3.4b Appeal of Code Administrator Decision under Section 2.3.1 to the County Development Review Committee
- i. Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County Development Review Committee shall make and file its decision approving or disapproving the Application or approving the Application with conditions or modifications.

ii. A decision of the County Development Review Committee on an appeal shall become final thirty (30) calendar days after the decision is filed, unless within that month an appeal of the decision has been filed by an interested person including the Code Administrator, pursuant to Section 2.3.4c of this Article or the Board on its own initiative has decided to review the decision.”

17. The Applicants authorized Sommer, Karnes & Associates, LLP to pursue the request for an appeal of the Land Use Administrator’s decision as evidenced by a copy of the written authorization contained in the record.

18. The Applicants complied with all noticing requirements of Article II § 2.4.2, of the Code. In advance of a hearing on the Application, the Applicants provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty one days on the property, beginning on April 30, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on April 30, 2015, as evidence by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners.

19. The Applicants’ agent spoke in favor of the Appeal. He acknowledged that the Applicants missed the deadlines for filing established by the BCC. He also advised the CDRC that a fire recently struck the Applicants’ home, which was located on the subject property.

20. Henry and Georgia Romero spoke, advising that they represented ten families affected by the Applicants’ towing business, and spoke in opposition to the Appeal.

Georgia Romero advised that the towing business limits the activities of the residents on Ben’s Lane.

SFC CLERK RECORDED 07/17/2015

21. Staff recommended denial of the Applicants' appeal of the Land Use Administrator's decision to reject the incomplete and untimely submittal for Master Plan, Preliminary and Final Development Plan approval, noting that the Land Use Administrator's decision was in compliance with the BCC's Final Order.

WHEREFORE the CDRC hereby upholds the Land Use Administrator's decision to reject Applicant's submittal for Master Plan, Preliminary and Final Development Plan approval as it was deemed untimely. The motion to deny the Appeal passed by a 6-0 vote.

THE SANTA FE COUNTY DEVELOPMENT REVIEW COMMITTEE

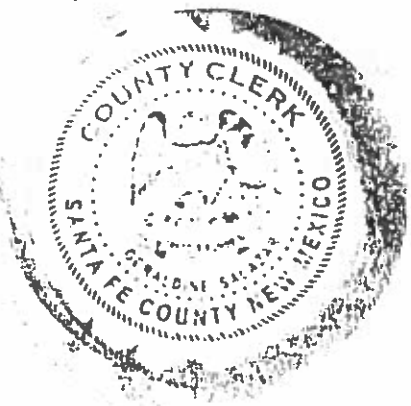
By: Frank Katz, Chairperson

ATTEST:

Geraldine Salazar
Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

7-16-2015



Gregory S. Shaffer, County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
CDRC ORDER
PAGES: 8
I Hereby Certify That This Instrument Was Filed for
Record On The 17TH Day Of July, 2015 at 09:55:30 AM
and Was Duly Recorded as Instrument # 1769771
of The Records of Santa Fe County



Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy County Clerk, Santa Fe, NM

SFC CLERK RECORDED 07/17/2015

SOMMER, KARNES & ASSOCIATES, LLP

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Santa Fe, New Mexico 87504-2476

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Facsimile: (505) 982.1745

James R. Hawley, Attorney at Law
jrh@sommer-assoc.com
Of Counsel
Licensed in New Mexico and California

August 14, 2015

Jose Larranaga
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Appeal of CDRC Decision
Re: BCC Case # MIS 13-5061

Dear Mr. Larranaga:

On behalf of property owners Robert and Bernadette Anaya, by this letter and the attached application, the Anayas appeal the decision issued by CDRC rejecting as untimely the Anaya's August 13, 2014 submittal for Master Plan, Preliminary and Final Development Plan approval (the "Application").

The basis for the Appeal is that the underlying Order upon which the Anayas submitted their Application extended a deadline for filing the Application, but the Anayas did not receive notice of the Order's adoption until after the 30 days had passed. Furthermore, the Order did not address ramifications of failure to submit the Application within the identified timeframe and the Land Use Administrator's refusal to accept the Application is arbitrary and capricious and violates that Anaya's rights to due process.

Also, as expressed to County Counsel Rachel Brown and contrary to the representations of Ms. Green's letter, the County has allowed for property owners to continue pursuing approvals after BCC-imposed deadlines have passed. For example, in the case of Minnie Walsh (Case # V-13-5190), in 2006 the BCC issued a temporary permit allowing a second dwelling unit for a period of 2 years and required the property owner to apply for any extension. The BCC ordered that "failure to comply with any of these conditions shall result in administrative revocation of the permit." The property owner failed to apply for extension for the following 7+ years. Instead of revoking the permit, the Land Use Administrator accepted an application from the property owner for variances to allow for the second unit to become permanent.

In the Walsh case, County failed to enforce a time deadline with specific ramifications stated in the BCC order. In contrast, through no fault of their own, the Anayas did not receive notice of the Order until after the deadline passed and then acted diligently to prepared and submit the Application. Moreover, the Order did not express any ramifications if the deadline was not met.



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SOMMER. KARNES & ASSOCIATES, LLP

Santa Fe County Growth Management Department

August 14, 2015

Page 2 of 2

The Anayas request that the CDRC decision be vacated and the Application be processed in the normal course.

Sincerely,


Karl H. Sommer

NBB-149

LEALS

LEGAL # 80443

BCC CASE # APP 15-5250 Robert and Bernadette Anaya Appeal

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held to consider a request by Robert and Bernadette Anaya for an appeal of the County Development Review Committee's decision to reject a submittal for Master Plan, Preliminary and Final Development Plan as it was deemed untimely. The property is located at 2253 Ben Lane, within Section 31, Township North, Range 19, East, (Commission District 2).

A public hearing will be held in the County Commission Chambers of the Santa Fe County Courthouse, corner of Grant and Palace Avenues, Santa Fe, New Mexico on the 13th day of October 2015, at 5 p.m. on a petition to the Board of County Commissioners.

Please forward all comments and questions to the County Land Use Administration Office at 986-6225.

All interested parties will be heard at the Public Hearing prior to the Commission taking action.

All comments, questions and objections to the proposal may be submitted to the County Land Use Administrator in writing to P.O. Box 276, Santa Fe, New Mexico 87504-0276; or presented in person at the hearing.

Published in The Santa Fe New Mexican on September 22, 2015.

EXHIBIT

18

Exhibits

N13B-150

CERTIFICATION OF POSTING

I herby certify that the public notice posting regarding Land Development

Case # App 15-5250 was posted for 21 days on the property beginning

The 22nd day of September, 2015. **

[Signature]
Signature

*Photo of posting must be provided with certification

****PLEASE NOTE:** Public notice is to be posted on the most visible part of the property. Improper legal notice will result in re-posting for an additional 21 days. It is the Applicant's responsibility to ensure that the notice is on the property for the full 21 days.

STATE OF NEW MEXICO }
COUNTY OF SANTA FE }

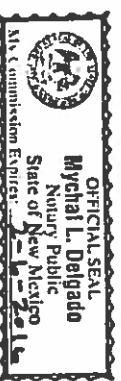
The foregoing instrument was acknowledged before me this 28th day of

September, 2015, By Kent H. Sommer.

[Signature]
Notary Public

My Commission Expires:

2-6-2016



PUBLIC NOTICE

Notice is hereby given that an application has been filed with Santa Fe County for an appeal of the county development review committee's decision to reject a subdivision for number 100, preliminary, final development plan as it was deemed unimprovable.

Name of Applicant: **BARBARA J. BARNETT, DVM**

Address of Request: **2253 RAINBOW**

Legal Description: **Section 31**

Range: **9 East** Township: **17 North**

A: **Public Hearing**

Old Santa Fe County Courthouse, corner of Palace and Grant

Avenues, Santa Fe, New Mexico on the 12th day of

October, 2015, at 1:00 pm before the Board of

County Commissioners

Further information can be obtained by contacting:

The Santa Fe County Department, P.O. Box 276, Santa Fe, NM 87504

Phone: (505) 825-1235, Development Permit # 15-00000

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Agua Fria Village NA
c/o Gilda Montano, Secretary
1983 Calle Cristo
Santa Fe, NM 87507

Street, Apt.
or PO Box
City, State

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Española, NM 87533

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or PO Box
City, State

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Anthony J C de Vaca
2259 Ben Lane
Santa Fe, NM 87507

Street, Apt.
or PO Box
City, State

PS Form 3800, August 2005 See Reverse for Instructions

7008 1140 0003 5881 3906

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2249 Ben Lane
Santa Fe, NM 87507

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or PO Box
City, State

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c/o William H. Mee, President
2073 Camino Samuel Montoya
Santa Fe, NM 87507

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David and Rosemary Medrano
2094 Botulph Rd
Santa Fe, NM 87501

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NBB-153

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956 Nazcon Rd
Bernalillo, NM 87004

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2810 Lopez Lane
Santa Fe, NM 87507

Street
or PO
City, State

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NBB-155

